CONSILIORVM CELEBERRIMI IVRISCON-SVLTI DOMINI AYMONIS CRA-VETTÆ A SAVILIANO EX DO-minis Genoliæ,

IN STVDIOSORVM GRATIAM A MENDIS omnibus probe expurgatorum,

PARS SECVNDA.



Cum Gratia & Priuilegio S. Cæſareæ Maieſtatis.

Francofurti ad Mœnum,
Apud Ioannem Saurium, Impenſis Nicolai Rothii.
M D C X I.

CONSILIORVM CELEBERRIMI IVRISCONSVLTI DOMINI AYMONIS CRAVETTÆ A SAVILIANO EX DOMINIS GEnolæ in Studioſorum gratiam a mendis omnibus probe expurgatorum.

SVMMARIA.

1 Ex pacto de non alienando hypothecam contra tertium poſſeſſorem. in quo articulo Paul. de Castro contrarius fuit ſibi [illegible].
2 Alexand. [illegible] quandoq; dixit [illegible] Paul. de Caſt. authoritate non minus deferendum quam au[illegible] Alex. & Ioannis de Anan. & Paul. ſe ipſum commendat.
3 Pactum reſolutionis [illegible] an impediat [illegible], in quo articulo Baldus, Paulus de Caſtr. & Alexander [illegible] reſeruntur.
4 Hypothecaria agens, an debeat probare dominium vel poſſeſſionem hypothecanti remiſſum.
5 Conſiteri cenſetur quis narrata per eum in reſcripto quod impetrauit, licet illud ſit ſubrepticium. & nu. 6. vbi etiam quod talis confeſſio [illegible] ſicut expreſſa.
6 Producens reſcriptum aut inſtrumentum non poteſt impugnare narrata in eo, licet producat in parte & paſſibus pro ſe tantum facientibus. ibid. nu. 9. quod ſine dubio procedit, quando talis productio acceptatur.
7 Producens reſcriptum, eo uti non poteſt, ſi neget narrata in eo, niſi aliquid per errorem narratum ſit.
Producens teſtes, cenſetur eorum dicta approbare, licet deponerent de credulitate tantum. ibid.
8 Obligatio perſonalis poteſt ſequi tertium poſſeſſorem, ſi ſtatutum ita dicat.
9 Hypothecariam habens, poteſt agere contra tertium poſſeſſorem actione confeſſoria vel negatoria, quod eſt ſingulare.
10 Subditus quis non dicitur ratione ſolius bonorum. & nu. 16. vbi declaratur.
Fidelitatem non tenetur quis iurare ex eo ſolum quod poſſideat bona in alieno territorio. ibid.
Forenſis conuenitur in aliquo loco, ex eo ſolum quod ibi poſſidet bona, non ligatur ſtatuto pertinente ad deciſionem cauſæ. ibid. nu. 10. & num. 11 & num. [illegible] vbi declaratur, & nu.
11 Interpretatio ſtatuti dubii ſumitur ex obſeruantia poſtea ſecuta.
12 Conſuetudo aut obſeruantia interpretatiua non requirit præſcriptionem.
13 Verba ſtatuti ita debet intelligi, vt aliquid operentur, etiam contra ius commune, immo etiam contra ipſum [illegible].
Et ſumitur argumentum a contrario ſenſu ad correctionem iuris communis, [illegible] alias in ſenſu directo ſtatutum nihil operaretur, & debent intelligi verba, vt aliquid operentur etiam in materia pœnali, & trahi debent verba quaſi ad extraneum intellectum, vt aliquid operentur.
Bona fides non præſumitur, ſed probari debet, quando in ſtatuto requiritur bona fides, vt ſtatutum aliquid operetur. ibid.
14 Valet ſtatutum diſponens contra forenſes ratione bonorum quæ poſſident in territorio ſtatuentium. Ideo valet ſtatutum, quod forenſis teneatur ad collectas pro bonis quæ poſſidet in territorio ſtatuentium contra Cornerum.
Forenſium conditio fieri poteſt deterior per ſtatuta quam terrigenarum. ibid.
17 Iuramentum dicitur quid indiuiduum.
Non poteſt quis eſſe fidelis pro parte, & pro parte non, ſicut non poteſt quis eſſe pro parte ſeruus, & pro parte liber, pro parte ingenuus & pro parte libertus. ibid.
18 Duplex vinculum fortius operatur, ideo plus valet ſtatutum pacto vallatum, quam ſtatutum ſimplex. Idem in ſtatuto coniuncto cum conſuetudine, quod valet [illegible] ſit contrarium, vbi alias non valeret.
19 Stylus contra ius commune valet, [illegible] reſcriptus.
21 Stylus [illegible] debet ſiue [illegible] tantum ſiue ad litis deciſionem. Ideo valet [illegible] ſtat in pendenti.
22 Aduocati partium per iudic[illegible] audiri debent.
Stylus vt valeat, non requiritur quod ſit obtentus in contradictorio iudicio. ibid.

Stylus ſi non obſeruetur per Iudicem, [illegible] atque agere ibid.
23 [illegible] non debet [illegible]
24 [illegible] forum [illegible]
25 Cum a ſacis propter [illegible], conſuli [illegible] quam ſi ſint factum.
26 Quali[illegible] aliquo actu, an ſufficiat quod ex poſt ſuperueniat [illegible]
27 Statutum [illegible] de tempore indeterminato & generaliter, generaliter [illegible]
Immunitas poteſt quandoque fieri antequam deducatur res in iudicium. ibidem.
28 Ratio quando vnica tantum conſiderari poteſt [illegible] habetur pro expreſſa.
Præſcriptio non currit non valenti agere, licet impedimentum agendi proueniat culpa impedientis.
Exceptio plene & perfecte probari debet, ita quod neceſſario concludat & probari debet in ſua ſpecie, & forma, vt concludat effectum exceptionis. ibidem.
Præſcriptionem allegans tenetur eam probare, & probare debet negligentiam partis, & ſcientiam quod ſciret ſibi competere ius agendi. ibidem.
29 Negligentia ignoranti imputari non poteſt. ibid. nu. 29 & 30.
30 Allegari quid debet, licet de iure præſumatur.
31 Scientia inſtrumenti præſumitur contra eum qui illud produxit.
Scientia inſtrumenti præſumitur contra eum qui de ipſo inſtrumento facit mentionem. ibidem.
32 Ignorantia probatur iuramento.
Præſcriptionem allegans quæ ſolum incipit currere poſt tempus mortis alicuius, debet ipſum tempus praeciſe probare. ibid.
33 Præſcriptionem allegans, tenetur probare ſcientiam eam eſſe antelatam contentam.
34 Reſtitutio in integrum an detur aduerſus præſcriptionem longiſſimi temporis ex capite ignorantiæ & concluditur quod ſi, in quo articulo fuerunt ſibi ipſis contrarii Alexandrum Socin. Decius, Alexand. & Gozadin.
35 Reſtitutio in integrum nunquam cenſetur ſublata per verba generalia, niſi expreſſe agatur.
Vniuerſalia verba reſtringi debent ad id, quod eſt rationis.
Premari non debet quis iure ſuo ſine ſua culpa. ibid.
Ignorans dicitur iuſte impeditus. ibid.
36 Præſcriptio dicitur odioſa, [illegible] continentium [illegible] dicitur enim impium præ[illegible] & contra naturalem æquitatem. & numer. 39.
37 Præſcriptionis ratio haberi an debeat vbi proceditur ſola facti veritate inſpecta remiſſione, in quo articulo Iaſ. [illegible]
38 Statutum prohibens exceptiones opponi, dicitur pertinere ad litis deciſionem.
Valet ſtatutum tollens exceptiones ſeu prohibens exceptiones opponi. ibidem.
39 Statutum admittens aliquas exceptiones tantum, cenſetur alias reiicere.
40 Taxatiua habet in ſe implicitam negatiuam.
Statutum admittens aliquas exceptiones tantum, non cenſetur excludere alias exceptiones ſimiles expreſſis. ibid.
41 Ita quod verba habent naturam limitatiuam & taxatiuam.
42 Geminatio multum operatur, & per eam magis euidenter apparere de voluntate diſponentis, multo hoc cumulantur de verbis geminationis.
43 Verba & in alter. operantur quod diſpoſitio extendi non poteſt, & eorum natura adeo eſt præciſa, quod modificatio aliqua nec interpretatio a verbis ſeparata admittitur.

[illegible] *cudex ex officio cum temere.*
40 [illegible] *ad* [illegible] *eandem, aut quem non eſſ* [illegible]
41 [illegible] *citur de* [illegible] *an non pote* [illegible] *etiam quan-* [illegible] *contra tertium poſſeſſorem ex* [illegible] *hypotheca.*

CONSILIVM CC[illegible]

Pro M[illegible] *co Domino Theodoro Muleti olim Aduocato Regio Gener*[illegible] *in curia parlamenti Gratianopolis, ad praeſens autem* [illegible] *in magno Conſilio Regio, & compatre amicorum placi*[illegible]*ſſimo*

D[illegible] ſubſidio ex corde poſtulato. Præſuppoſito in facto probatum eſſe in bayliuatu Sancti Marcellini, & [illegible] tenentes bona in dicto bayliuatu, forum ſortiuntur [illegible] Sancti Marcellini, vbi conueniri poſſunt, & amplius [illegible] ſtatutis ſtylu & legibus ipſius loci, licet habitent alibi [illegible] ipſum bayliuatum. Ruſſus quod ex ſtylo eiuſdem loci [illegible] mediate vel immediate conueniri poſſunt tanquam ſingulares ſucceſſores, & bona tenentes pro contractibus, qui geſti cenſentur cum authoribus eorum, etiamſi in obligationibus authorum nulla ſit expreſſa ſubmiſſio. ¶ Hoc [illegible] miſſo, & præſuppoſito, dubitatur de pluribus, & primo, qui agitur per ſpectabiles dominos actores ad reuendendum [illegible] tertius poſſeſſores bonorum, quæ per actores eo[illegible] reuendi debuiſſent. At pactum de re[illegible] afficiat ipſos ſingulares ſucceſſores de iure commu[illegible] ¶ Secundo, an pars de Vallino conuenta dici poſſit ſubdita [illegible] loci Sancti Marcellini [illegible] bonorum quæ poſſidet in bayliuatu eiuſdem loci. ¶ Tertio, an agi poſſit contra eos ſingulares poſſeſſores ſaltem ex forma ſtyli Sancti Marcellini, licet non de iure communi. ¶ Quarto, an obſtet exceptio præſcriptionis allegata contra [illegible] tionem inſtrumen[illegible] ¶ Quinto, an ſaltem dicatur præſcriptum pacto de retruendo [illegible] ex lapſu longiſſimi temporis. ¶ Sexto, an opponi poſſit exceptio præſcriptionis, vbi alias legitime præſcriptum eſſet, ſtante ſtylo prædicto. ¶ Septimo, an diſcuſſio facta antequam agere[illegible] contra ipſos [illegible] poſſeſſores, dicatur legitima. ¶ Octauo, an [illegible] in actores legitime dicatur probaſſe eorum intentionem. ¶ Super quibus dubiis antequam ingrederer ad eorum explicationem, non parum quidem ſubtimebam, [illegible] viribus imparia videbantur, ſane vetus maior [illegible] & compatris beneuolentia, quam onus vt vllum re[illegible] Itaq; venio † ad primam dubitationem, in qua [illegible] dicendum videtur, quod competat dominis agentibus vtilis [illegible] vendicatio contra ſingulares & tertios poſſeſſores ad reuen[illegible] bonorum, nec potuerunt primi emptores, qui promiſerunt retrovendere [illegible] præiudicare venditorum, quibus promiſſio [illegible] eſſet [illegible] venditoribus, ex pacto enim de reuendendo duplex [illegible] competit, realis, vtilis, & perſonalis ex contractu, per [illegible] *in l.* [illegible] *vend.* [illegible] vbi Paul. de Caſtr. *ff. de pignor. act.* Raph. Cum. [illegible] *ff. de* [illegible] Iaſ. in conſ. [illegible] *lib.* [illegible] *col. 2. poſt med. verſ. & cum* [illegible] licet hic [illegible] De. *in conſ.* [illegible] *8 col. fin.* ¶ Et licet domi[illegible] lex. contrarium [illegible] *in conſ. 10 lib.* [illegible] tamen ad eius fun[illegible] Suc. *in conſ.* [illegible] *lib. 3.* & [illegible] magnalis Alexan. authoritas, quandoq; tamen & ipſe errauit, imo dixit quandoque [illegible] clarum, vt [illegible] refert *in l. fin.* [illegible] *toto. §. cu* [illegible] *legata prima* [illegible] minus deferendum eſt authoritati Paul. de Caſtro & Cum. quam authoritati domini Alexan. [illegible] *in med. conſ. 8* [illegible] de Paulo enim authoritate alibi meminit Soc. *in conſ. 89 ad fin. lib. 4* probans authoritatem eius paruam non eſſe, de Pauli enim authoritate ſcribit Bo[illegible] *ad conſilia Ioannis de Anan.* [illegible] *l. 6.* [illegible] quod authoritas Pauli de Caſtr. non [illegible] authoritate Ioan. de Anan [illegible] & menſis. Iaſ. etiam in conſ. [illegible] *5. colum. 9 circa medium lib. 4.* appellat Paulum de Caſtr. Doctorem optimum. Imo ipſemet Paul. in conſ. [illegible] in [illegible] de ſe ipſo loquens dicit quod [illegible] allegare authoritatem [illegible] bonæ conſcientiæ & recuſauit con[illegible] contra mentem [illegible] *in conſ.* [illegible] *verſ.* [illegible] *col.* [illegible] *circa med. libr.* ¶ Et vetum quod in caſu

[illegible] Paul. [illegible] Pal[illegible] [illegible] domini [illegible] [illegible] Alexand. & [illegible] eum intendum, quia idem Alexand [illegible] *in l. qui ab* [illegible] *ff.* [illegible] Ripa poſt Bart. *in l. plan. articulus* [illegible] *dum. columna 18* [illegible] *ff. de legatis* [illegible] Idem tenent Al[illegible] *colum. 3 in fin.* [illegible] Iaſon. & Alex. [illegible] addoq; [illegible] eandem opinionem [illegible] Alexan. [illegible] [illegible] *in l.* [illegible] *4.* ſimiliter contra [illegible] *col. 3.* [illegible] ¶ Sed aduertendum quod [illegible] tenent contra Alex. [illegible] mouentur authoritate [illegible] *in l.* [illegible] *C. de condi.* [illegible] *ff. de donat.* [illegible] quod Bald. fuit [illegible] *48. Mag. ſupra* [illegible] tenet opinionem [illegible] & Bart. [illegible] Paul. de Caſt. [illegible] & contrarium tenuit [illegible] *319 dec. columna 2 ad princ. verſ.* [illegible] *lib.* [illegible] vbi [illegible] priuati non poſſunt facere quod ſi factus alienatur [illegible] nulla, quia annullare actum ſpectat ad ſuperiorem, priuati autem non poſſunt facere quod leges non habeant locum in [illegible] *l. nemo poteſt. ff. de leg. 1.* [illegible] Dec. *in l. tra-dictionibus. col.* [illegible] *C. de pactis.* ſequitur opin. gloſſ. Bald. & Alex. licet de memorans contrarietatibus mentionem non faciat, ex quibus apparet quantæ ſit difficultatis paſſus iſte. ¶ Similiter [illegible] ca opin. Pauli de Caſtr. *in dicta l. ſicum venderet* quam ſequitur Iaſ. *in d. l. con. l. 118. colum. 5. in fine libr. 4.* idem Iaſ. tenuit ſibi contrarius, & contrarium tenuit *in conſ. 149. colum. fin. libr. 4. & in l. 5. ff. de* [illegible] *ff. ad treb.* vbi quod obligatio perſonalis non tranſit contra ſingulares ſucceſſores [illegible] contracta ſit obligatio reſpectu [illegible] tranſit ad ipſum ſingularem. ¶ Et hac contrari[illegible] [illegible] audiatur, & retrauendere poſtularet quaſi ſe ponſat [illegible] poſtulat de [illegible] & ter habendi re[illegible] cupidi [illegible] perpetuo vita maduit. ¶ Et in caſu iſto ceſſare videtur difficultas, quia actum fuit [illegible] perſonali [illegible] contractum datum bonis emptorum qui promiſerant retrouendere, & [illegible] actio propoſita ſit iudicium reale & hypothecarium [illegible] ſuis partem de Valino ex [illegible] hypothecæ contractæ, ipſos emptores obligato [illegible] adtenendum quo [illegible] extra omnem dubitationem, vt [illegible] rat Soc. [illegible] *lib.* [illegible] ſubdit quod tamen [illegible] eſt Sau. [illegible] nulla e[illegible] neceſſaria. ¶ Neque opponi † poteſt probationem eſſe neceſſariam ſequitationem hypothecæ [illegible] ſufficiat probare ſolum poſſeſſorem hypothecarium de tempore contractus hypothecæ, ſiue oporteat probare dominium, iuxta not. per Bar. *in l. rem* [illegible] *ff. de pignor. action.* [illegible] *in l.* [illegible] *de pignor.* Socin. *in conſ.* [illegible] *colum. 2. libr. 4.* Modeſtino *in §. verſ.* [illegible] *de action.* vtrumque probatum eſt ex confeſſione partium [illegible] pro quod impetrauit à Regia maieſtate die ſexta Decem. bri anno 1537. ¶ [illegible] producta, vbi apparet ſateri [illegible] & [illegible] Domini [illegible] & Caroli coniugum, qui bona olim [illegible] etiam eorum qui ipſi obligationibus bonis [illegible] cenſentur † enim pars conuenta omnia [illegible] ſe ſcripſionem [illegible] *l. cum procurat. C. de lib. cauſ.* [illegible] quæ Iaſon. & Decius [illegible] *in l. edita in 4. not. C. de edendo in l. cum te in quarto notabi* [illegible] *tranſact. in l. 2. in ſecunda nota. Cod. de edict.* [illegible] idem Iaſon. [illegible] *C. de his qui potent* [illegible] *C. in 3.* [illegible] *de action.* & alibi ſæpe [illegible] tores. ¶ Nec poteſt impugnare [illegible] ſcripti quod ipſa producat, etiamſi produxiſſet [illegible] teſtatione quatenus faceret pro producente, & in parte [illegible] [illegible] Paul. de Caſtr. *in conſ. 311.* [illegible] *col. 2.* [illegible] Rota *deciſ. 264.* [illegible] Iaſ. [illegible] Paul. [illegible] [illegible] dubio non [illegible] contra quam productus eiuſmodi productum [illegible]

[illegible] quia locus dicti Marcelli [illegible] in dicto territorio, tunc procedit [illegible] ſtatuta & ſtylum ipſius loci [illegible] uenit alios [illegible], & domum [illegible] tum e longo tempore, imo [illegible] pore. Ergo apparet quod verba [illegible] cellus, dum loquuntur de ſub [illegible] bent intelligi etiam de toto [illegible] ctionis ipſius loci, id eſt, mediante [illegible] ritorii ipſius loci. Imo ceſſent [illegible] tra poſte [illegible] non facile [illegible] telligi poſſint verba ſtatuti [illegible] tur de toto, ubi bona poſſidet [illegible], quia ſi verba ſtatuti intelligeremus [illegible] putata ratione domicilii aut [illegible], id eſt, de eo qui [illegible] mediante [illegible] iuriſdictionis aut forte adiutionis [illegible] ff. de eod. tunc nihil operaretur ſtatutum [illegible] ſtatuto idem cautum de iure communi [illegible]. Sed verba ſtatuti ita debent [illegible] intelligi [illegible] tra † ius commune, imo [illegible] 13

[illegible] tolli poteſt ab ſtatute ciuili priuato & [illegible] late Doctores, nec per [illegible] tur ius ſuum: nam licet emptor & ſic ſinguli ſucceſſor conueniatur, habet tamen regreſſum contra auctorem. Ruſus [illegible] teneretur reuendere, numeratur ei precium [illegible] quam [illegible] videretur damnum [illegible] vendicare non poſſet, [illegible] precio tam exiguo, niſi [illegible] ¶ Vltra [illegible] conſidero [illegible] quod bona [illegible], vide [illegible] hypothecae [illegible] acquiſitum ius [illegible] creditoribus & [illegible] vendirus, quae [illegible] emptores tenentur [illegible] hypotheca bo[illegible], cuius [illegible] competit [illegible] actio [illegible], per [illegible] habere ius in bo[illegible] poteſt negatoria, [illegible] competere in his bonis, & [illegible] quem [illegible] in conſideratione, vel [illegible] negat [illegible] pulchre & [illegible] Paul. de Caſtr. in conſ. 35. [illegible] ¶ Deſcendo ad ſecundum dubium, in quo

10 videretur [illegible] dicendum, quod [illegible] ſolus poſſeſſionis bonorum [illegible] ſubditus quis [illegible] Paul. de Caſt. in conſ. 89. poſſet quis dicere. col. 2. circa medium. libr. 2. ideo non [illegible] quis, vt iuret fidelitatem [illegible] ſolum quod bona poſſideat in alieno territorio, niſi [illegible] habitet [illegible]. Innoc. in cap. poſtulaſti. de foro competenti. Brunus Aſtenſis in conſil. 35. columna. 4. Iacob. [illegible] Alexandrin. [illegible] alle [illegible] Doctor. [illegible] Alexand. in conſil. 138. column. 5. libro 1. & [illegible] 6 [illegible] libr. 5. quod [illegible] conuenitur in ali[illegible] ſolum, quod in [illegible] poſſidet bona, non [illegible] ſtatuti [illegible] quod per [illegible] ad litis deciſionem, [illegible] Alexand. in conſil. 164. column. final. verſic. [illegible] ¶ [illegible] contrarium [illegible]

[illegible] debet [illegible] intellectu [illegible] poſſit accommo[illegible] ff. [illegible] argument [illegible] in ſtatuto ad [illegible] quando [illegible] nihil operaretur [illegible] ſtatuta enim [illegible] debent [illegible] quod de [illegible] Angel. in conſil. 62. [illegible] Iaſon in conſ. 54 [illegible] libr. 3. ideo quando ſtatutum requirit bonam fi[illegible] praeſumitur [illegible] probari debet, vt ſtatutum aliquid operetur Barbat. [illegible] Calcan. in conſil. 28. column. 3. in fin. [illegible] quod procedit [illegible] poenali, [illegible] verba ita debent intelligi, vt aliquid operentur. [illegible] quem text. [illegible] hoc citat Ant. de Bu[illegible] in conſil. 1. [illegible] final. libr. [illegible] imo [illegible] verba [illegible] neum intell[illegible] quam pro [illegible] hoc refert & ſequitur Calcan. in conſil. 12. column. 4. [illegible]

 Hic

[illegible]

23 [illegible] grauari ſupli[illegible] [illegible] loci. *l. manu*[illegible] *in Rhod. de ia. l.* [illegible] *§ item reſcripſerunt. ff.* [illegible] *§ qui inuita ff. de lega. 2. l. ſi cum do.* [illegible] *de lote prælega.* Oldr. *in conſ. 234* [illegible] & incollecta trac. [illegible] *conſ.* [illegible] *Camerina col. 1 poſt med. verſ. nec obſtant.* [illegible] *in conſil. 117. ad finem.* [illegible] *§ quoties* [illegible] *ff. Publicia* [illegible] *in duobus locis* [illegible] *non debet* [illegible] *etiam text. in* [illegible] *plane. §.* [illegible] *non quocunque. §. qui Cauon. ff. de legatis 1.* ſimiliter Papa per [illegible] mandatum non [illegible] grauat eordinarium in du[illegible] [illegible] *mandatum. de reſcriptis.* imo [illegible] *de reſcript. lib.* [illegible] ſed hic non agitur de [illegible] cauſ oneris, ſed de fo[illegible] & compete[illegible] iudicis, & iſtius ſtatuti effectu an p[illegible] de V[illegible] iudicatur ſtylo ſeu ſtatuti loci [illegible] Marcellini. & [illegible] iſta ſint omnino diuer[illegible] habent [illegible] onem diuerſam & ſeparatam [illegible] *de calumnia. l. naturaliter. §. nihil com-*

24 *mune. ff. de acquiren.* [illegible] *cum ſimilibus.* imo † cum ratione rei quæ [illegible] partorum in [illegible] S. Marcellini, *per text. C. ibi* [illegible] & ſtatutis eiuſdem loci. [illegible] partorum [illegible], & ſtatutis ligari [illegible] ibi [illegible] Bar. Alex. *in conſ. 20* [illegible] *col. 1 lib. 1* Dec. *in c.* [illegible] *col. 1. poſt med.* [illegible] *col. 6.* [illegible] § Verum ad 4. [illegible] præſ[illegible] primum aduerſus [illegible] onem inſtrumenti [illegible] hoc [illegible] legari in vim ex[illegible] ſed iudicio meo non [illegible] pitionem, & [illegible] andum eſt quod iſta ſigillatio inſtrumenti [illegible] ad effectum probationis, vt per ſigillum inſtrumento [illegible] ſiat inſtrumentum magis plenum [illegible] probation[illegible] *poſt ſeſſionem.* vbi Dec. *columna 2. de prob.* & idem Dec. [illegible] *9. loco co.* [illegible] *columna 4.* [illegible] hic principaliter [illegible] ad corroborandum inſtrumentum [illegible] ſeu pacti [illegible] conſequenter principaliter [illegible] dicatur [illegible] ptum ipſi pacto de [illegible] ag[illegible] poſſit [illegible], in conſequen[illegible] neceſſarium dicendum eſt non eſſe præſcript[illegible] inductius ſigillationem, quæ fi

25 propter ipſum pactū ad eius probationem quia [illegible]

[illegible] tur. § Tertius [illegible] 234 *in cauſa* [illegible] *columm. 3* [illegible] quod ſuffic[illegible] ante iſtam qualitatem [illegible] etiam poſt [illegible] quod Corn. ſcribit *in conſil. 6 column. 4. lib. 1. vbi* [illegible] quæ ab initio non valuit, quia curator non iuraſſ[illegible] tur ex poſt [illegible] iuramento, [illegible] non ſit de ſubſtantia inſtrumenti, ſed requiritur [illegible] maioris efficaciæ, vt habe[illegible] inſtrumentum vim [illegible] conteſtationis litis, &c. prodeſſe debet ſigillatio [illegible] § Sed magis in [illegible] per Alc. poſt Pe. de Bellaper. & C[illegible] *ſi reum meam* [illegible] *ff. de verb. oblig.* ſtat ſtatut[illegible] quod nu[illegible] poſſit agere per Procuratorem niſi de hoc impetrauerit priuilegium: modo [illegible] Procurator[illegible], deinde impetrat priuilegium, quæritur an valeat conſtitutio procuratoris factæ ante priuilegium impetratum? [illegible] eodem modo [illegible] ſigillat[illegible] teruenſſet, [illegible] quod [illegible] agendi, cum antea inſtrumentis non [illegible] tione procurat[illegible] quæ ſine priuilegio [illegible] quod habeatur priuilegium eo tempore quo [illegible]

§ Præterea † ſtatut[illegible] ſigillatio [illegible] 27 indeterminate non exprimendo [illegible] mpus [illegible] ſigillari, [illegible] ſufficiat [illegible] [illegible] tempore [illegible] *venditione.* [illegible] *de tempore. ff. de bonis auth.* [illegible] Bar. [illegible] *conſ. 56. Præmit* [illegible] Rom. [illegible] quod idem Rom. ſcrib[illegible] *prætor.* [illegible] § Abſolute [illegible] Co[illegible] *221 col. 2* [illegible] quod vbi [illegible] nonem [illegible], non [illegible] nandum [illegible] tempus quo fi[illegible] debeat, ſufficit eam [illegible] [illegible] Et dicit [illegible] *in conſ. 37* [illegible] quod ſuffic[illegible] nem quando [illegible] queant [illegible] de [illegible] iudicium [illegible] [illegible] & indeterm[illegible] ſufficit quat[illegible] quid [illegible] ad [illegible] pertin[illegible] *col. prima* [illegible] *l. ſi cum exceptione. §. 1.* [illegible] *ff.* [illegible] *cauſa* [illegible] *quibus per cum idem* [illegible] *columna 2.* [illegible] § P[illegible] probatio[illegible] ſufficere de [illegible] ſigillationem, modo [illegible] tempore quo [illegible] &

[illegible] ¶ [illegible] *circa med. C. quis admitti* [illegible] reſtitutio, ſed idem [illegible] dum ſequitur Alex. [illegible] idem Dec. [illegible] ſequitur Alex. *in conſ. 169.* [illegible] tenet, quod detur reſtitutio ſecundum [illegible] munem [illegible] nem. ¶ Et autem *in cap. vigilanti* [illegible] contrarietatem Alexand. [illegible] detur tamen inclinare quod detur reſtitutio [illegible] tem [illegible] loco, [illegible] *ff. de poſtul.* [illegible] ſitur. [illegible] tanta inconſtantiæ & contrarietatis Doctorum quod [illegible] non poſſint, æquanimius ferrem [illegible] alius
35 [illegible] ¶ [illegible] tenet, dummodo [illegible] detur, [illegible] dico quod competat reſtitutio in integrum, quæ nunquam cenſetur [illegible] pugnantia, [illegible] expreſſe agentur [illegible] quod [illegible] *l. 1. C. [illegible] pendente appellat.* vbi, ſi ſtatutum [illegible] audientiam querelis bannitorum, auditur tamen petens [illegible] reſtitutionem in integrum ex iuſta cauſa, [illegible] & ſequitur C. [illegible] ¶ Secundo adduco quod ſcribit C[illegible] *[illegible] colum. 26. ff. de [illegible]* vbi ſtante ſtatuto, quod nihil opponi poſſit, non tamen impeditur reſtitutio [illegible]. ¶ Tertio adduco quod ſcribit Bald. *in [illegible]* ſtatuto, quod non poſſit appellari, [illegible] petitamen [illegible] reſtitutio [illegible]. ¶ Quarto adduco quod ſcribit Soc. *in conſ. 153. col.* [illegible] *conſil. 199 col. pen. ad fi. lib. 2.* vbi quod reſtitutio in integrum non cenſetur ſublata per illa verba, quod quis moleſtari non poſſit directe vel indirecte à quauis perſona [illegible] generalem non cenſetur [illegible] in priuilegio ſpeciali. Idem tenet Aretin. *in conſil. 16. colum. 2. poſt med.* [illegible] *in integr. reſtitutio* idem tenet & ſequitur Decius *in l. poſt quam lite. colum.* [illegible] *glo. ibi.* & ibidem etiam [illegible] *colum.* [illegible] *C. de pa.* [illegible] ex quibus rationibus patet reſponſio ad argumenta adducta in contrarium per Dec. *in dict. conſil. 29.*
36 ¶ † [illegible] reſpondeo, quod verba vniuerſalia, quæ Decius conſiderat reſtringi debent ad id quod eſt rationis. *l. quamuis ff. de* [illegible] Bald. *in authentica* [illegible] *colum. 1.* & ibi Dec. *colum. 3.* [illegible] & idem Bald. *in l.* [illegible] *C. de* [illegible] ſed [illegible] ratio dictat, quod vbi quis fuit ignorans & iniuſte impeditus, ſubueniri ei non debeat remedio reſtitutionis in integrum, alias priuabitur iure ſuo ſine ſua culpa, ignoranti enim culpa imputari non poteſt neque negligentia. *leg. argentarius* [illegible] *commodati* [illegible] *quia diuerſitatem. de conc. ff. præbend.* ſed ſine culpa iure ſuo priuari quis non debet. *cap. cognoſcentes. de conſtitution.* [illegible] imo exeo, quod quis fuit ignorans, dicitur iuſte impeditus. *l.* [illegible] *ff. de* [illegible] Bartol. & Doctor. *in l. genero ff. de* [illegible] ¶ Poſtremo
37 conſidero, quod [illegible] dubium, in dubio † fieri debet interpretatio [illegible] contra præſumptionem, quia talis [illegible] *l. nec vllam ff. ex* [illegible] quia quiſque [illegible] tempore. *[illegible]* Andreas de Iſern. Martin. [illegible] Alexand. [illegible] *in princip. colum.* [illegible] *quo tempore* [illegible] dicitur præſidium temporis, *in authentic.* [illegible] præſcriptio dicitur [illegible] æquitatem. C[illegible] *in titulo de rebus* [illegible] & dicit Abb. [illegible] quod præſcriptio dicitur odioſa tanquam ibi [illegible] ius alterius. [illegible] & quod præſcriptio [illegible] quam ibi valde notat Ange. [illegible] *colum. 3 circa medium. libr.* 2. ideo inſert [illegible] quod arbitrator, & alij qui debent iudicare ſecundum æquitatem non debent habere [illegible] præſcriptionis, idem in hoc [illegible] Bologni. *in* [illegible] *colum.* [illegible] in contrarium, & quod [illegible] præſcriptionis [illegible] ſuſpecta, & ſecundum æquitatem tradit [illegible] *conſil.* [illegible] *libr. 1.* ſed non eſt præſentis ſpeculationis. ¶ Non omitto quod præmiſſa non procedunt [illegible] temporis antiquiſſimi, cuius initij memoria [illegible] in contrarium, in quo ceſſat reſtitutio [illegible] ¶ Capio textum dubium, poſito ſine præiudicio veritatis, quod præſcriptum diceretur aduerſus pactum de retrouendendo, an talis exceptio præſcriptionis poſſit opponi ſtante ſtatu. loci ſancti Marcelli, quod contra inſtrumentum ſigillatum ſeu literas compulſoriales ſuper tali inſtrumento conceſſas, tres duntaxat exceptiones admittuntur [illegible] ſolutionis, & nouationis. in quo dubio † præſuppono, quod tale ſtatutum licet pertineat ad litis deciſionem [illegible] prohibet exceptiones opponi, ex his quæ ſcribit Rochus de Curt. *in c. [illegible] cap. fin. colum. 15. de conſuetud.* tamen comprehendit partem de Valmo, & eam ligat, per ea, quæ latius [illegible] in ſolutione [illegible] dubij. Quo præſuppoſito conſiderandum eſt, quod valet ſtatutum per quod impeditur quis exceptiones opponere, ex his quæ notat Bartol. *in l. Antiochenſium. ff. de priuileg. cred.* & *in leg. totres ff. de pollicit.* Alexandrin. *conſil. 112. colum.* [illegible] Canon. [illegible] vbi Decius [illegible] *ff. de offic. deleg.* maxime debet valere ſtatutum per quod opponi non poteſt exceptio † præ- 38 39
ſcriptionis, quæ dicitur [illegible] *in auth.* [illegible] *Roman* [illegible] & præſcriptione locupletatur quis cum [illegible] Socin. *in conſil. 86. colum. 4.* [illegible] & [illegible] præſcriptio contra naturalem æquitatem. Bald. [illegible] quod [illegible] quod præſcriptio [illegible] non habetur in conſideratione *gloſſ. in l.* [illegible] quam gloſſ. pro notabili refert & commendat Cro. [illegible] *colum. 10.* [illegible] *colum. 33.* [illegible] & cum inducta ſit præſcriptio de metu [illegible] ſtatutum [illegible] poteſt [illegible] ſtatutum ſancti Marcelli tres duntaxat exceptiones admittens ſolutionis, falſitatis & nouationis, cenſetur alias exceptiones excludere, maxime exceptionem [illegible] præſcriptionis, dictio [illegible] tam negatiuam reſpe- 40
ctu [illegible] exceptionum, [illegible] non poſſint, *capit. cum* [illegible] vbi Ioann. Andr. poſt Goffr. *in verſ.* [illegible] *gloſſ.* [illegible] *C. de præſ.* [illegible] ¶ Nec obſtat quod exceptio præſcriptionis videatur ſimilis exceptioni ſolutionis, & quod ſtatutum tollens exceptiones, ſeu aliquas tantum admittens, non cenſetur excludere eas, quæ ſimiles ſunt expreſſis. Bald. & Angel. *in l.* [illegible] *Cod. de adulter.* [illegible] *colum.* [illegible] *poſt med. verſ. 4.* [illegible] nam reſpondeo quod in caſu noſtro hoc procedere non poteſt propter verba ſequentia ſtatuti, ibi, ita quod a [illegible] remedio non ſit locus, quæ verba nihil operarentur, niſi cenſerentur exceptiones excluſæ quæ expreſſis ſimiles eſſent, nam diſſimiles [illegible] excluſæ erant per illam dictionem duntaxat [illegible] ¶ Rurſus 41
illa verba, ita quod, & [illegible] & taxatiuam. [illegible] Decius [illegible] Socin. [illegible] ſtatuto [illegible] duplex, & geminata taxatio, propter † quam 42
geminationem dicendum eſt opponi [illegible] non poſſe exceptionem præſcriptionis, quæ [illegible] tacentium [illegible] taxationis, ſeu [illegible] fortius declaratur voluntas [illegible] quod [illegible] exceptionem opponi [illegible] expreſſis. Bald. [illegible] Bart. [illegible] *C. de* [illegible] magis enixe dici [illegible] apparere de voluntate diſponentis, [illegible] ſæpe duo verba [illegible] appoſita. Paulus de Caſtro *in conſil.* [illegible] *Super* [illegible] *videtur* [illegible] *Cod. de* [illegible] inuenitur in dubium [illegible] præſcriptio [illegible] validum tam [illegible] *Clem.* [illegible] vbi quod poſt tres ſententias [illegible] non admittitur exceptio nullitatis. ¶ Alibi ſcribit Oldrad. *in conſil. 133* [illegible] quod geminatio ſeu reiteratio actus oſtendit mentis perſeuerantiam. per text. *l.* [illegible] *C. de* [illegible] ¶ Et tollit geminatio actus ſuſpicionem deceptionis. *l. ſimiliter. C. ad Vellei.* ¶ Et ſignificant verba geminata [illegible] mentem diſponentis. Bald. *in l. cum te. colum. 2.* [illegible] ¶ Ampliorem enim effectum verba geminata, vt aliquid operentur. Bald. *in l.* [illegible] ¶ [illegible] eiuſdem verbi repetitio [illegible] operatur *gloſſ.* [illegible] *in verſicul.* [illegible] Et verba de ſui natura importantia arbitrium boni viri, ſi geminentur important liberam voluntatem. Corn. *in conſil. 30.* [illegible] *colum. 3 circa med. libr. 4.* Alibi ſcribit idem Corne. [illegible] *col. 3.*

[illegible]

[illegible] ſtatuto nihil dicitur de præſcriptione, igitur admitti non debet talis interpretatio propter verba præcisa & prohibitiua ipſius
44 ſtatuti. [illegible]

[illegible] quid 409. licet non ita defendat. ¶ Aggre[illegible]
45 [illegible] de excuſſione, in [illegible] excuſſiones [illegible] non ſ[illegible] ¶ [illegible] S[illegible] num interdictum, ſecundum Socin [illegible] quod [illegible] interdictum ſatis intricatum dici poteſt ex illa clauſula ſaluari, [illegible] iuſtitiam miniſtrari, quæ [illegible] ad omnia valens, ex his quæ late Iaſ. ſcribit in §. *omnium n.* 47. *Inſtit. de action.* [illegible] Dec. *in l.* [illegible] *ff. ſi certum petatur.* & alibi ſæpiſſime Doct. ¶ Secundo, quia illi domini coniuges Yuo & C[illegible]rlota principaliter obligati notorie erant abſentes, & eorum heredes, quo caſu diſcuſſio non videtur neceſſaria. *gloſſ. in auth.* [illegible] *C. de p*[illegible] Bald. *in conſ.* [illegible] 60. [illegible] Al[illegible] *in conſ.* 29. *col.* [illegible] Rom. [illegible] Alex. [illegible] Bell[illegible] Dec. [illegible] quod abſens dicitur, qui eſt in alieno territorio. [illegible] vbi quod [illegible] diſcuſſio non eſt exigibilis propter abſentiam [illegible] ¶ [T]ertio, quia ex ſtatuto S. M[illegible] [illegible] ſine diſcuſſione [illegible] teſta[illegible]

[illegible]

[illegible] amplius non laboro. ¶ Circa octauum dubium [illegible] ra, quia præſcriptio [illegible] probatur [illegible] domina[illegible] tes prol[illegible] reuertendo. Item probatum eſt per confeſſionem partis [illegible] reſcripto producto ab ea, quod domus [illegible] eſt illa, quæ fuit vendita domino Yuoni & C[arl]otæ per [illegible] de Forentio & quam domini Yuo & Carlota promiſerunt vendere: quæ probatio ſatis ſuperque ſufficit, vt probauimus in primo dubio & vlterius ſunt etiam [illegible] probationes. ¶ Hoc conſilium edidi in gratiam Magnifici Domini Theodori Mulet[illegible] generalis [illegible] Delphinatus viri ſane nobiliſſimi & ampliſſimi [illegible] a quo [illegible] primum Gratianopolim venimus [illegible] benigne humaniterque & [illegible] fuimus recepti, [illegible] ſit [illegible] cum [illegible] neuter alterum [illegible] audiuiſſet [illegible] mutua et [illegible] Gratian. 26 Iunii. 1538. Aymo Crauetta Sauilla, I. V. D. ſub correctione, &c.

S V M M A R I A

1 *Diſputatio* [illegible]
2 [illegible] *num.* 43.
3 [illegible] *num.* 44
[illegible]
4 *In venditione* [illegible] *num* 14.
5 [illegible]
6 [illegible] *ff. ad l. Falc.* [illegible] *num.* 41.
7 [illegible]
8 [illegible]
9 [illegible]
10 [illegible]
11 *Legitima non* [illegible]
12 [illegible]
13 [illegible]
14 [illegible]
15 [illegible]
16 [illegible]
17 [illegible]

[illegible]

21 *Poſsint et alios alia non [illegible] aque principaliter.*
Re[illegible] alios ad [illegible] bus de quorum præiudic. [illegible] conſequentiam, po[illegible] tamen [illegible] numer. 21 & ib. d. q[illegible] non est nec[illegible], quando [illegible] perſona poſſideret, quin tueri poteſt cauſam et [illegible].
22 *Res actum inter alios [illegible] quo nocet aliis etiam prodeſt quidem multo magis.*
23 *Aequalitas [illegible] aut alterius diſpoſit[illegible] declarat dubium.*
24 *Re[illegible] diſpoſi[illegible] est ac ſi diſpo[illegible] facta non eſſet 29.40.52.*
25 *Portio [illegible] datum, quid non [illegible] ipſe vel [illegible] ademptum.*
Pern[illegible] ſſe ad al[illegible] non dicitur qu[illegible] ſpore at num. 25.
26 *Ademp[illegible] conditione [illegible] data [illegible] contrariu cond[illegible] 25 [illegible] cum [illegible] ex[illegible] intentio[illegible]*
27 *Res[illegible] actus inter viuos re[illegible] ſſit, [illegible] tamen dicatur ſiuro*
28 *Actio[illegible] neceſſitate ſtatuti [illegible] ab arbitris ar loco Iudicis ordinario.*
29 *Fundamen[illegible] omnia corruunt.*
Antecedens [illegible] corruit conſequens num. 29.
Conſequens [illegible] antecedens eſſe non poteſt num. 30.
30 *Translatio, quæ fi[illegible] diuerſo iure aut titulo, non cenſetur facta cum omnibus ſuis qualitatibus.*
Translatio non fit cum ſuis qualitatibus, quando alterat & intercedit. numer. 31.
31 *Qualitate deficiente cuius reſpectu quid agitur, deficit diſpoſitio.*
32 *Maioritas rati[illegible] conſideratur vt [illegible] ex ea etiam in materia odioſa.*
33 *Reuocabile dominium, impropriè dominium dicitur.*
Perfectum non dicitur quod reuocari poteſt num. 33.
34 *Denominatio fit à prima cauſa non ab [illegible], quod ſit in executionem ipſius primæ cauſæ.*
35 *Traditio non requiritur, vt dominium rerum hereditariarum acquiratur heredi, ſed adita [illegible] ſufficit h[illegible] caſu.*
Adi[illegible] hereditatis dominium rerum hereditariarum acquiritur he[illegible] num. 35.
36 *Pactum aliter dicitur [illegible].*
37 *[illegible] acquiſitio.*
38 *Materia ſubiecta verba impropriantur, vt intelligantur ſecundum ſubiectam materiam.*
Impropriatio verborum [illegible], vt intelligantur ſecundum materiam ſub[illegible] num. 36. [illegible] mater. 8.
39 *Impedimento ceſſante locus eſt diſpoſitioni [illegible] impedimento conſtante ceſſabat.*
40 *Identitas cauſæ præſumitur ex breuitate temporis.*
42 *Pluralitas cauſarum non præſumitur.*
46 *Voluntas hominis declaratur ex priuata eius ſcriptura.*
Confeſſio in facto alieno præiudicat confitenti num. 47.
47 *Animus conſiſtit in facto.*
48 *Confeſſioni veriſimili fides habetur, quæ alias non haberetur.*
Veriſimilitudo operatur vt fides detur confeſſioni veriſimili, aliequin fides nihil haberetur. num. 48.
51 *Grauatus in reſtitutione fideicommiſſi detrahet meliorationes factas in duobus fideicom.*

CONSILIVM CCII.

Divino ſubſidio ex corde poſtulato. Per arbitros electos ex forma ſtatuti aſſignatum fuit prædium Tuſculanum quondam Sempronio filio Mæuii, tum nomine legitimæ, quam aliorum iurium de quibus in laudo: ita tamen quod decedente ipſo Sempronio ſine maſculis, poſſint Titius & Seius nepotes dicti Mæuii, ex filio prædefuncto, dictum fundum Tuſculanum emere pro libris ter mille. ¶ Deceſſit Sempronius ſine maſculis relicta filia Æmilia, quæ per [illegible] laudum coacta eſt vendere dicta bona memorato Seio, vni ex dictis nepotibus fratri eius patrueli, precio [illegible] ex diſta [illegible] bonorum dicti fundi Tuſculani, propterea, & aliorum bonorum fideicommiſſo ſubiectorum, vt proponitur. ¶ Quæritur, an dicta bona Tuſculani reciderint in cauſam fideicommiſſi, ita vt legitima Sempronii dicatur habita in pecunia numerata librarum ter mille, de quibus ſupra. ¶ Incurrit quæſtio coram magnifico Senatu & ſuper ea variè ſcriptum per aduocatos vtriuſq; partis, digna ſane viſa eſt quæſtio ad quam nonnulla & [illegible] ſcripta mandaremus. Plane quo clarior fiat, arguemus ad partes, ſiquidem

1 diſputando † & opponendo veritas illuſtrior enitcat *l. 2. & ex leg. ff. de orig. iur. l. Offilius ff. de leg. 3. l. dum ff. de iur. patron. l. ſi. § in xt. e. ff. [illegible]* & hoc & eo ſplendidior ſit veritas quo ſæpius agitatur. *c. ſi. 35. q. 9. gl. in c. cum Ioannes extra de fide inſtrum. cum ſimilib.* Videretur dicendum prima fronte dictum fundum Tuſculanum non fuiſſe reſtitutum in cauſam fideicommiſſi, quia fuit aſſignatus dicto Sempronio libere ex cauſa legitimæ & aliorum iurium pertinentium ad ipſum Sempronium, per quam aſſignationem extincta fuit qualitas fideicommiſſi, quia debetur legitima ſine onere. *l. quoniam in prior.

2 C. de inoff. teſtam.* ſed qualitas † fideicommiſſi ſemel extincta amplius non reuiuiſcit *l. qui res. § aream ff. de ſolut. l. cum ex cauſa. & l. ſi. C. de remiſ. pign.* ut etiā actio ſemel extincta per pactum, reuocari non poteſt, ſed ſi [illegible] pactum ad nouam actionem aut obligat. *l. ſi vnus. § pactus. ff. de pa[illegible].* ¶ Secundo per aſſignationem dictorum bonorum libere vt ſupra factam, dicta bona fundi Tuſculani fuerunt vnita patrimonio Sempronii, ideo quando fuerunt vendita Seio dicuntur vendita tanquam libere & de patrimonio ipſius Sempronii & qualia erant apud eum: quia

tranſit res † cum ſuis qualitatibus *l. generaliter. § ſi. in ff. de fideicommiſ.* 3
[illegible] l. e ſi aqua ductus. ff. de contrahend. empt. [illegible] in venditione. ff. de action. empt. ¶ Neq; obſtare videtur ſi dicatur bona iſta Tuſculani fuiſſe empta per Seium ex precio bonorum fideicommiſſi, ob id quod videantur ſubrogata in locum bonorum fideicommiſſi. *l. Imperator. in fin. cum l. ſeq.* vbi Bart. *ff. de legat. 2.* quia negatur, pre[illegible] fuiſſe redactum ex bonis fideicommiſſi & non dicuntur alienata bona Tuſculani, quæ ipſa liberata fuerunt à cauſa fideicommiſſi ratione legitimæ: quo caſu ceſſat diſpoſitio *dict. l. Imperator. in fin.* vt per Socin. *in conſil. 6. lib. 3.* ¶ Similiter non videtur ob-

ſtare † dictum Bart. *in l. in diem. ff. de aqua pluu. arcend.* vbi quod venditor redimens rem ex pa[illegible], [illegible] non habere ex noua cauſa, ſed antiqua, ſequitur [illegible] eius *in conſ. 3 colum. & in conſ. l. 88 col. 2. circa med. & in conſ. 238. in 5. quæſt.* qui [illegible] ntum quando bona fuiſſent apud ipſum Seium ex cauſ. fideicommiſſi, qui illa alienaſſet [illegible], & p[illegible] ex pacto, in quibus terminis loquitur Bart. [illegible] nunquam fuerunt apud Seium ex cauſa fideicommiſſi [illegible] non poteſt quod reuertantur ad eum ex antiqua cauſa: imo bona [illegible] erant apud Sempronium, neque fuit actum de reuend[illegible], ſed de vendendo, ita quod non poteſt non [illegible] ad Seium ex noua cauſa aut ex nouo titulo emptionis ¶ A[illegible]ue non videtur obſtare confeſſio Seii [illegible] libelli in quo [illegible] ſe velle recuperare dicta bona tanquam hereditaria & ex cauſa fideicommiſſi, quia talis † confeſſio videtur erronea, cum ap- 5
pareat de contrario quod non eſſent hereditaria, ob id talis error nocere non [illegible]. *l. ſed & ſi [illegible]. ff. de condict. indebit. l. error.* vbi late Doct. [illegible] *in l. non fatetur ff. de confeſſ. cum ſimil.* ſecundo iſta videtur confeſſio procuratoris voluntaria quæ domino non præiudicat, vt habetur *in l. certum. § ſed an ipſos. ff. de confeſſ.* ¶ Poſtremo † pro hac parte videtur text. *in l. ſi a me ff. ad leg.* 6
Falcid. vbi quādo legatarius reſtituit legatum heredi ex cauſ. fideicommiſſi, heres illud capit non ex cauſa prima hereditaria, ſed ex titulo fideicommiſſi. ¶ Sed præmiſſis non obſtantibus cōtrarium videtur de iure verius, quod imo reuerſa fuerint bona Tuſculani in cauſam fideicommiſſi ſequentibus fundamentis ¶ Primo dico † cauſam facti magis conſiderandam eſſe quam 7
ipſum factum. *l. verum. [illegible] ff. de furtis. & [illegible] ibi gloſſ. in ver. ex cauſis. de verb. ſign. & ſi [illegible] § quadam. vbi gl. in verb. ex cauſa [illegible] de iureiur. & cum delatum. & l. [illegible] ſi. de tranſact.* & dicit gl. *in l. [illegible] ff. de adim. leg.* ſemper eſſe ſpectandum quare aliquid fiat, per text. *in l. cum tale. § ſi. ff. de cond. & demonſtr.* & quod in pulchro caſu tradit Calder. *in conſ. 4. in tit. de haret.* vbi quod infirmus petens hoſtiam non conſecratam, non quia de fide male ſentiat, ſed vt dicere poſſit ſumpſiſſe eum corpus Chriſti, reputans ſe indignum vere illud aſſumere: licet peccet ita faciendo, tamen non iudicatur hæreticus inſpecta cauſa ita petendi, qua non conſiderata hæreticus procul dubio iudicaretur: & ſic magis inſpicitur cauſa petitionis, quam ipſa petitio Modo quærenda eſt cauſa, cur iuſſus fuerit Sempronius bona ſibi aſſignata vendere Seio precio conſtituto, & talis quærenda eſt ratio, ex qua laudum arguatur iuſtum, quia † præſumitur pro ſententia *l. Heremias. § Cato ff. de condit.* 8
l. 2. ver. quod non arbitramur. C. de off. [illegible] in noſtra de pr[illegible] in præſentia de renun[illegible] de etat. & qual. & in laudo quod [illegible], tradit Bald *in [illegible] in queſtione talis eſt quadam [illegible] in ſin l. [illegible] Abb. in conſ. 64 col. [illegible] Alex. in l. [illegible] col. [illegible] ff. de verb. oblig. Dec. in conſ. [illegible] col. 4. Iaſ. in conſ. [illegible] col. 4. lib. 1.* Ruſſus præſumenda eſt ratio in arbitris de qua poſſit apparere, non alia remotior, de qua non appareat quia † ſummum præſumptio eſt iis 9
quæ apparent, quæ autem non apparent, non præſumuntur. Anch. *in conſ. 301. in materia de qua quæritur. col. ſi. poſt med. per l. quod Seruius ff. de cond. ob cauſ. l. [illegible] ff. de contrahend. empt.* ſed dicitur apparere quod bona Tuſculani eſſent totius hereditatis Mæuii & ſubſtituentis precioſiſſima. Secundo quod excederent valorem legitimæ & æris alieni Sempronio debiti. Tertio, quod Seius cui eſſent vendenda bona vt ſupra, eſſet vocatus ad fideicomiſſum. Quibus omnibus animaduertis, cogitauerint veriſimiliter arbitri, quod legitima aſſignanda Sempr. non eſſet in re optima totius hereditatis, vt habetur *in l. in 4. ff. ad l. Falc. & in l. ſi. [illegible] quem habentem. C. fam. erciſc.* cogitauerunt etiam q. bona aſſignata plus valerent, & quod fieret iniuria Seio ſubſtituto ſi talis aſſignatio perpetuo

eſſ[illegible].

efficio [illegible] eſſet rurſus cogitauerunt quod [illegible] præiudicium tantum non fieret doe dent Sempronio [illegible] æque vocans, ob [illegible] temporanei [illegible] vt [illegible] bona [illegible] poſſideret, & [illegible] heredes eius maſculi. Cæterum [illegible] os maſculos voluerunt [illegible] opem [illegible] ipſi Seio, bona habe [illegible] pre [illegible] tri mille quod precium [illegible] & aliud æs alienū Sempro [illegible] ad ſideicō [illegible], & bona ait [illegible] cederent [illegible] & æris alieni, [illegible] ad [illegible] ſetnam legitima debetur [illegible] *C. de inoff. teſtam.* itaq. non patiebatur [illegible] æquitas quod cogeretur Sempronius aut heres [illegible] bona d [illegible] trahere, niſi memoratæ rationes conſtarent ¶ Primo de dicendum eſt mentem arbitrorum fuiſſe quod haberet [illegible] ius dicta bona eo iure & [illegible] quo habere poterat, id eſt de iure fidei commiſſi. *l. quædam mulier ff. de rei vend.* [illegible] ¶ Secundo quod intentio arbitrorum fuerit in tali pacto, vt prouiderent ipſis Seio & Titio tanquam ſubſtitutis, arguitur hoc modo: nam duorum alterum neceſſarium eſt, vel quod appoſitum fuerit tale pactum, aut talis modificatio in laudo ex cauſa mere voluntaria, quia ita placuerit arbitris, aut ex cauſa neceſſaria, quia viderent arbitri [illegible] voluntatem teſtatoris, ſi bona precioſiſſima totius hereditatis venirent ad extraneos, & recederent [illegible] ſtitutis de agnatione, ob id voluerunt adiicere talem modificationem, per quam nun [illegible] bona familiam teſtatoris, ſed in hac dubietate dicendum eſt motos fuiſſe arbitros ex cauſa magis neceſſaria per

10 quam voluntati defuncti ſatiſfactum eſſet: nam † diſpoſitio dubia ac interpretanda eſt, vt ad cauſam trahatur magis neceſſariam [illegible] [illegible] ad hoc citat Signor. [illegible] quod [illegible] voluiſſe quem [illegible] in caſu neceſſario non voluntario idem tradit Bal. [illegible] vbi quod diſpoſitio interpretari debet vt ad cauſam trahatur magis neceſſarium, per l. 1. §. *quod ergo. ff. de ventre inſpic.* [illegible] ſed ſtipulatio aut diſpoſitio arbitrorum, magis [illegible] neceſſaria ob [illegible] cauſam ſubſtitutorum, quorum iuri detrahebatur ex tali aſſignatione bonorum in cauſam legitimæ & æris alieni de bonis optimis totius here [illegible]. Rurſus magis intererat ſubſtitutorum talem prouiſionem fieri, quia [illegible] derogabatur quam aliorum non ſubſtitutorum, quibus iniuria non fiebat, ergo dicendum eſt factam eſſe talem prouiſionem gratia eorum, quorum magis intereſſet, ſeu ob eam cauſam, in qu [illegible] neceſſitas. Raynut. de Forl. [illegible] vbi quod ſtatutum cenſetur [illegible] prouidere ei, cuius magis intereſt, & in quo maior [illegible] prouidendi. Itaque dicamus motos fuiſſe arbitros, vt eorum [illegible] ponerent propter cauſam fideicommiſſi, quo munus derogaretur iuri ſubſtitutorum & voluntati teſt [illegible], quam lædi non poſſe arbitrabantur, ex tali aſſignatione, modo Sempronius relinqueret maſculos vocatos ad [illegible] commiſſum. ¶ Et ſi dicatur, potuerunt moueri arbitri ex cauſa [illegible] agnationis extraneis [illegible] Dico quod talis ratio haberi non potuit, niſi propter teſtamentum Mæuii, quo ceſſante ceſſabat talis aſſi-

11 gnatio ex cauſa legitimæ, [illegible] quæ ab inteſtat [illegible] non conſideratur nec debetur [illegible] *C. de inoff. teſtam.* Abbas [illegible] Raynut. [illegible] Alex. [illegible] Aret. in [illegible] Curt. ſenior in conſ. [illegible] Itaque ſi habita fuit ratio agnationis propter teſtamentum Mæuii, quo ceſſante ceſſabat omnis diſſenſio [illegible] & ipſa aſſignatio ob cauſam legitimæ, ergo etiam & fideicommiſſi [illegible] eſt habita, quia relictum eſt fi-

12 deicom [illegible] maſculos fauor [illegible] agnationis nam † conſidera [illegible] agnati [illegible] diſpoſitio [illegible] maſculos, ita in fi- [illegible] quo [illegible] tradit Io. And. [illegible] & alij [illegible] ſtatio non

non poteſt ſeparari cauſa [illegible] 13

concurrunt [illegible]

[illegible] *l. 2. poſt medium* [illegible]

[illegible]

Ac idem text. [illegible] ſiue alteri [illegible] vt cum tantum, quando [illegible] non eſſet, [illegible] teſtator [illegible] motus ratione agnationis, [illegible] poteſt [illegible] tantum [illegible] ¶ Secundo quod [illegible] arbitrorum [illegible] diſponere ob [illegible] teſtatorem [illegible] nam vt dictum eſt, teſtamentum [illegible] ſtatoris [illegible] intenderent, quia [illegible] æqua [illegible] ſuccederet Sempronius, aut [illegible] turus tanquam heres repudianda, ne [illegible] dicendum eſt motos fuiſſe arbitros, vt [illegible] uiderent ob cauſam ipſius teſtamenti & fidei [illegible] licet, quia † prima cauſa ſemper eſt infruens & omnes [illegible] 14

ſequens ſit ex prima cauſa, quæ magis [illegible] alia cauſa poſterior, quia omnes [illegible] ſequentes ſub [illegible] tur prima, ſecundum philoſophum 3. *metaph.* tradit Cæſar [illegible] *conſil.* 4. [illegible] dere [illegible] Cum ius [illegible] ¶ Tertio in [illegible] cauſa actus, quorum [illegible] bus cauſis ſit potuit, in dubio præſumitur quod actum ex cauſa magis principali [illegible] & Bald. [illegible] Decius [illegible] not. poſt Bald. [illegible] ſed cauſa [illegible] principalis [illegible] teſtamentum Mæuii, quo ceſſante [illegible] & compromiſſa [illegible] & lauda, ſaltem ceſſaſſet omnino [illegible] tio in cauſam legitimæ quæ ab inteſtato non debetur, [illegible] eſt dictum, ergo dicendum eſt illam diſpoſitionem arbitrorum circa reſolutionem aſſignationis factam eſſe ob cau[illegible] [illegible] vt ceſſante [illegible] Sempronio ſine [illegible] maſculis [illegible] bona ad cauſam fideicommiſſi [illegible] per quod agn [illegible] a primordio [illegible] poſteri [illegible] tor [illegible] *l. 1. circa fin. C. de incep. lucra. deſcript. libr.* 10. ¶ Quarto [illegible] eſſe prouiſionem eiuſmodi, vt tueretur [illegible] bona [illegible] fideicommiſſi, plenius prouidetur omni[illegible] [illegible] ad fideicommiſſum, & plenius conſeruatur voluntas teſtatoris, quam ſi dicamus fideicommiſſi rationem non [illegible] tam eſſe, ergo † in dubio interpretatio illa capienda eſt, per 15

quam diſpoſitio efficitur plenior & perfectior. [illegible] & § [illegible] vbi quando ex eodem facto duo contra[illegible] ſiderari poſſunt, attenditur contractus plenior. Ad idem [illegible] Ad idem quod [illegible] Paul. de Caſtro [illegible] 179. [illegible] vbi, quod in re dubia eligenda via aut interpretatio per quam ſatis fit vtrique cauſæ, [illegible] allegat etiam Bald. [illegible] Sed intelligendo habitam rationem fidei [illegible] omnibus ſatisfit, quia ad illud [illegible] ſunt, voluntas [illegible] ſtat [illegible] ficatur & plenius [illegible] ¶ Quinto [illegible] fuerit, vt Seius haberet bona [illegible] 16

[illegible] Doctor. *in l. ſi quis ad exhibendum.* [illegible] Bartolus & Do [illegible] & idem Ba[illegible] [illegible] pronunciarunt ſuper lite, quæ erat inter partes, in qu[illegible] Seius ius omne [illegible] ex teſtamento Mæuii con[illegible] do & heredem [illegible] non adeunte ipſo Sempron[illegible] onus [illegible] Tuſculanum [illegible] Semp[illegible] gratiam Seii & [illegible] non temere & ſine cauſa, ſed quia [illegible] peteret ipſi Seio hereditas bonis [illegible] cauſa teſtamenti [illegible] 17

[illegible] teſtamenti a [illegible] non poterat mortuo Se[illegible] [illegible] maſculis [illegible] tam eum [illegible] ſtituto [illegible] q [illegible] præſumitur latum ob ca[illegible] ob quam 18

[illegible] Conſ[illegible] arbi[illegible] [illegible] o,p[illegible] [illegible] orum quæ non [illegible] [illegible] illa a[illegible] Tu[illegible] & [illegible] & [illegible] pro legitima [illegible] na & [illegible] teu h[illegible] mente [illegible] be[illegible] [illegible] betur [illegible] *C. iam* [illegible] vbi ai. [illegible] quia bona Tu[illegible] ni præ[illegible] & ſunt longe ma[illegible] atque eſſent legitim[illegible] num Sempronii, quæ duo præſuppoſita [illegible] & [illegible] bantur ex actis, quia [illegible] appellatum onus vendenti ipſis Seio & [illegible] nullæ, [illegible] [illegible] ſine

19 [illegible] cuius oneris ratione habita, [illegible] bona [illegible] va[illegible] apud Sempronium. Abb. *in c. ad noſtram. colum. fin. de empt. & vend.* [illegible] *in 2. not. ad dictum argumento l. fundi partem. ff. de contrah. empt.* tradit Alex. *in conſil.* [illegible] *in lib.* 4. & profecto ratione [illegible] ſola [illegible] niſi bo[illegible] duplus [illegible] fuiſſent ceſſante tal[illegible] one, non illud [illegible] fuiſſet, neque ill[illegible] Semp. unius [illegible] ¶ [illegible] maior probatur exact[illegible], conſidet[illegible] parte bo[illegible] torum Tuſculani [illegible] per Seium [illegible] & heredis Sempronii recupe[illegible] fundi Tuſculani, [illegible] tantum q[illegible] præſtium Tuſculanum duplo amplius [illegible] bat, [illegible] legitimæ &

20 æris alieni, ſuper q[illegible] de[illegible] iudex ex officio [illegible] ma[illegible] *l. qui* [illegible] *Pamphila. §. fin. ff. de leg.* 2. Alex. *in conſ.* [illegible] maioritate precii noluerant arbitr. quod [illegible] illa bona precio, quod valerent, ſed precium [illegible] ad libras ter nulle. ¶ Quibus ita præſuppoſi[illegible] dico, quod tale laudum aut [illegible] aſſignatio bono[illegible] Tuſc[illegible] læſionem & iniuſtitiam in damnum [illegible] ſubſtitutis nocere non poteſt, tanquam [illegible] acta [illegible] neque dici poteſt quod [illegible] præiudicio ſubſtitutorum in conſequentiam [illegible] nocere videtur res inter alios acta, quia reſpond[illegible] o duobus modis. Primo quod imo agebatur de præiudicio [illegible] torum ſubſtitutorum æque principaliter, non quod poſſ[illegible] aſſign[illegible] bona optim[illegible] totius h[illegible] pro legitima [illegible] aut di[illegible] ſtitu[illegible] [illegible] tatetur, ſub [illegible] non ve[illegible] [illegible] cauſa ag[illegible] fideicom-

21 miſſi cedent [illegible] quos alii non nocet q[illegible] *l. in C.* [illegible] *ff.* Bartol. *in l. ex de* [illegible] *de except. rei iudi.* & [illegible] *d.* [illegible] *lib.* 2. Alex. *in l.* [illegible] ¶ Secundo reſpondeo, eſto, ſine præiudicio ven[illegible], [illegible] ſubſtitutorum veniret in conſequentiam tantum, tamen poſſunt ſubſtituti reclamare aduerſus laudum per viam reductionis ad arbitrium boni viri, quemadmodum permittitur appellatio hi[illegible] bus nocet ſententia & in conſequentiam. Alex. *in l. filiusfamil. §.* [illegible] *colum.* 4. vbi C[illegible] *num.* 43. *& num.* 45. Ripa *num.* 42. *ff. de leg.* 1. & [illegible] Alex. *in conſil.* 161. *lib.* 2. [illegible] dicatur, non ſuit [illegible] reductio [illegible] reſpondeo quod [illegible] non videtur neceſſaria, q[illegible] ſubſtitutus [illegible] læſus ex laudo poſſidet bona, nam pot[illegible] de[illegible] iniquitatem laudi per viam exceptionis, & [illegible] & ſententiæ executionem [illegible] [illegible] amplius [illegible] [illegible] non [illegible] Ro[illegible] 342 [illegible] ¶ [illegible] tum & [illegible] [illegible] [illegible] in[illegible] bonorum [illegible] d[illegible] *laudum* [illegible] & [illegible] tionum,

[illegible] fuerunt pa[illegible] proſeſſ[illegible] quam [illegible] quatenus [illegible] *in conſil.* 2?6. *in princ.* [illegible] eadem [illegible] *ff. l.* [illegible] [illegible] reſp[illegible] [illegible] aſſignatio [illegible] ipſius [illegible] [illegible] non [illegible] fundo [illegible] uo & [illegible] onere, conſequ[illegible] [illegible] ne, vt n[illegible] om[illegible] reſponſione [illegible] [illegible] quod [illegible] et quod [illegible] [illegible] [illegible] 23 [illegible] cebat & [illegible] nam aſſignatio voluntas arbi[illegible] ſunt ex ratione [illegible] *l. quæſitum. §. ſed & ipſe l. quæſitum ff. de fundo inſtruct.* & [illegible] ſententiæ notat Dec. *in conſil.* 4?. *circa fin.* vbi quod [illegible] interpretari debet vt ſeruetur æqualitas int[illegible] ¶ [illegible] conſidero, fingamus citra præiudicium [illegible] torum non fuerit vt reuerteretur [illegible] nulli, tamen talis aſſignatio [illegible] & ſimpliciter facta, ſed [illegible] tum, imo in duplice [illegible] ler[illegible] vel qu[illegible] tant [illegible] Titio ſolutis libris [illegible] præ [illegible] Sempronium [illegible] duret amplius [illegible] non [illegible] 24 ſubie[illegible] *l.* [illegible] *l. 4. ff.* [illegible] *prelator. cum* [illegible] ratione p[illegible] conditio[illegible] [illegible] facta namq. tamen [illegible] vbi non [illegible] cauſa quæ tamen [illegible] ¶ [illegible] bona Tuſculani ab initio data [illegible] aſſignata non [illegible] dein fuiſſe, ſed adempta *l.* [illegible] *ff. de* [illegible] dominium quod alte[illegible] ratione. *l. cog. §. his quæ ſoliditum* [illegible] *ff.* [illegible] lius *in conſil.* 179. *colum.* 4 [illegible] ¶ [illegible] bona Tuſculani peruenitſe ad Sempro[illegible] nquam libe[illegible] legitimæ [illegible] quo [illegible] aſſignati [illegible] *l.* 2. *§. peruenitſe.* [illegible] *de verb. ſignif.* ¶ [illegible] 26 tio in effectu dicitur conta[illegible] relictis maſculis, etenim c[illegible] adempta [illegible] maſculis & ſolutis tribut[illegible] ſub contraria conditione. *l. alij quem.* [illegible] *ff. de condit.* [illegible] conditio deficit, quia maſculos [illegible] rum [illegible] enumerata eſt, ergo perinde [illegible] tion[illegible] ac ſi aſſignatio illa nunquam facta [illegible] bona Tuſculani *l. pœnam* [illegible] *perinde* [illegible] *ff.* [illegible] *ff. de* [illegible] *ff. de reg.* [illegible] ¶ Nec prohibet 27 octauo fundament[illegible] quod [illegible] videtur procede[illegible] ret viuos, qui [illegible] conditionis euentum [illegible] tamen [illegible] *ff. de iudicis* [illegible] Socin. [illegible] *quidam* [illegible] *ff. de condit. & demonſtr.* [illegible] D[illegible] *in d. l. pœnam in 4.* [illegible] *in conſil.* 308. *columna.* [illegible] *reſpondeo duobus modis.* ¶ Primo quod diſpoſitio [illegible] ab[illegible] habe[illegible] ſententia iudicis, vt per Aret. *in conſ.* [illegible] Dec. [illegible] *columna* [illegible] [illegible] laudum [illegible] ex neceſſitate [illegible] 28 [illegible] debet vi[illegible] ordinarii, & regulari [illegible] laudum [illegible] Angel. [illegible] Paul. de C[illegible] *C. de* [illegible] ¶ Secundo [illegible] poſito e[illegible] iudicium [illegible] ſtatis eſſe cius in actum inter viuos, fateor quod ante euen[illegible] conditionis dicitur pi[illegible] rus, ſed poſt euent[illegible] in[illegible] ſuitur, qua[illegible] ratione [illegible] amplius non dicitur, quia pactus [illegible] actus [illegible] non p[illegible] 29

rtiſt. *l. ſed* § [illegible] *ff. de verb. oblig.* [illegible] *ff. de ſolution.* & [illegible] nocetur [illegible] ſeu [illegible] cenſ[illegible]tur [illegible] nes [illegible] ect [illegible] nes [illegible] ſup[illegible] fundati. *clemen.* [illegible] *de nummum* [illegible] *orig.* [illegible] *quod caret clam.* [illegible] *ff. de except.* [illegible] *l. actionum in princ.* [illegible] *q. ff. de aqua pluui. arcend.* & [illegible] antecedenti deſtru[illegible]o corruit c[illegible]ſequens quod ſine antecedenti eſſe non pot[illegible]ſt. *l.* 1 § *bruniens ff. de off.* [illegible] *l. ſed & bre.* § *præter ff.* [illegible] *procur. l. quod per manus* [illegible] *bene motiuum.* vbi [illegible] *ff. de verbor. oblig. l. non dubium in ſin. Cod. de legib.* [illegible] *diſt.* ¶ Tertio reſpondeo qu[illegible] [illegible]rificata condi[illegible]tione [illegible]ſolutionis, bona Tuſculani transferunt [illegible] in Seium & Titium alio iure neceſſario atque eſſ[illegible]t [illegible]pud Sempronium, quia apud [illegible]mpronium erant iure legi[illegible]mæ & ob cauſam æris alieni, ſed arbitri aſſignantes ob eam cauſam dum mandant transferri n alias perſonas, non potuerunt ſenſiſſe de eadem cauſa legitimæ, quia legitima debita S[illegible]mpronio non erat debita nepotibus in quos tran[illegible]tio fiebat, ſi alio iure fiebat translatio per arbitros, id eſt, ex cauſa teſtamenti, cum alia conſiderari non poſſit, dici non poteſt quod tranſiuerint bona in Seium & T[illegible]tium cum eadem
30 qualitate, in qua erant apud Sempronium: quia † translatio quæ fit diuerſo titulo aut iure, non cenſetur facta cum omnibus ſuis qualitatibus. Paul. de Caſt. *in conſil.* 137. *Præmium teſtamentum in* 3. *dubio lib.* 1. *dixit in rub. ff. de leg.* 1. *num.* 5. ¶ Quarto reſpondeo, quod [illegible]ſta translatio bonorum Tuſculani in perſonas Seii, & Titii, dici non poteſt facta cum ſuis qualitatibus aut cum eadem cauſa, cum [illegible]ta fuerit ſub alternatione dandi pecuniam & quidem minor[illegible] quam valerent, ex eo quod Baldus ſcribit *in l. maximum vitium. C. de lib. præter.* vbi quando alteratur legitima ex forma ſtatuti qui diminuitur, non amplius debetur titulo inſtitutionis, ſequitur Socin. *in conſ.* 127. *col. fin. lib.* 1. ¶ Quinto reſpondeo, q[illegible]od
31 de[illegible]iente [illegible] qualitate cuius reſpectu quid diſponitur, deficit [illegible]ſpoſitio, puta, ſi conceditur beneficium ſub nomine collegii, [illegible]ſoluto collegio reſoluitur beneficium *l. ſi vſusfruct. ff. quib. mod.* [illegible] *amit. l. intelus. in princ. ff. de cap. dimi. l. pater.* § [illegible] *ff. de leg.* Signuro [illegible] *conſ.* 92 [illegible] *verſ. præterea ad hoc fortificandum.* ſed bona Tuſculani aſſignata fuerunt Sempronio libera propter legitimam & aliud æs alienum, quæ qualitas quo ad illa bona ceſſat in aliis perſonis Seii & Titii, ergo dici non poteſt, quod eſſent apud eos ſub illa qualitate. ¶ Sexto reſpondeo retorquendo argumentum, ſi apud Sempronium non erant bona Tuſculani libera ipſo moriente ſine maſculis, licet eſſent aſſignata pro legitima, cuius natura eſt, vt bona quis libera habeat. [illegible] *quoniam in prioribus. C. de inoffic. teſtam.* quanto minus dicendum eſt, voluiſſe arbitros bona illa libera eſſe apud ipſos Seium & Titium [illegible]ius & cauſam fideicommiſſi, & ſi noluerunt arbitri venire bona Tuſculani ad illa. Sempronii, quanto minus dicendum eſt, voluiſſe eos venire bona totius hereditatis optima ad prorſus extraneos, deficientibus Seio & Titio ſine ma-
32 ſculis. ¶ Iſtud † argumentum à fortiori quam efficax ſit, nemo eſt qui neſciat. *l. quanto magis. ff. de tutor. l. cum pater ff. de ſer. export.* vbi procedit tale argumentum, etiam in materia odioſa: & in materia odioſa eſt text. *in l. qui indignum ff. de ſenat.* [illegible] *vbi Bart. ff. de adult. l. relegatorum.* § *poteſt. ff. de interdict. & relegat. l. in ſuis ff. de liber. & poſthum. cap. aliorum de ſent. excom.* in quo argumento apparet duplic[illegible] hic conſideratur maioritatem rationis. ¶ Septimo re-
33 [illegible]ndeo, † poſito, eſſemus in actu inter viuos, in quo non procederet dicta lex, aliquando, & quod pendente conditione reſolutionis aſſignatio bonorum Tuſculani dicatur pura, tamen dominium talium bonorum impropriè dicebatur apud Sempronium, ex quo reuocari poterat in conditionis euentum. *l. ſi quis fundum.* vbi Aret. [illegible] *de acquir. hered.* Iac. Nigi. *in l.* [illegible] *colum.* 1 *num.* 84. *ff. de legat.* 1. hic etiam perfectum non dicitur quod reuocari poteſt [illegible] *non videtur.* [illegible] *de donat. cauſ. mort.* Segnorol. *in conſil.* [illegible] *ante fin.* Similiter [illegible] dominus non dicitur, qui non poteſt pro libito [illegible] Cornel. *in conſil.* 142. *colum.* 4. [illegible] *lib.* 4. *per text. in authent.* [illegible] Itaque impropriè [illegible]cebantur [illegible] bona apud [illegible] libera & ex cauſa legitimæ, ex quo cauſa [illegible] ſubiecta erat [illegible], & in locum [illegible] bo[illegible]rum [illegible] ganda erat pecunia librarum ter mille, [illegible] tum fundamentum ſumptum ex regula [illegible] *ff. de condit.* [illegible] efficaciter vigere & con[illegible] ¶ N[illegible]
34 [illegible] iſta bona T[illegible]lani recuper[illegible] pretu[illegible] Bar[illegible] *ff. de aqua pluuiæ arcend.* [illegible] rem ex [illegible] ſecuta [illegible]

[illegible] de [illegible] quod [illegible] *hær.* [illegible] *empt.* [illegible] ſtatu[illegible] [illegible] ca illa empt[illegible] [illegible] teſta[illegible] & n[illegible] ſtat[illegible] & ſi [illegible] emp[illegible] ex p[illegible]na cau[illegible] A[illegible] [illegible] *quod* [illegible] *vers. nemini* [illegible] *§ 1 ff.* [illegible] *ſcrip.* [illegible] A[illegible] [illegible] Dec. *in cap.* [illegible] *in ſine* & aliis [illegible] genu[illegible] non pa[illegible] [illegible] pe[illegible] ad pr[illegible] [illegible] bitri [illegible] bona Tuſ[illegible] [illegible] debita ex te[illegible]to, ex quorum arbi[illegible] laudo dicuntur ſubiecta ipſa [illegible] non ex vendi[illegible] ta. ¶ Neque obſtat huic nono fundamento reſpon[illegible] data in argumentis contrarii quod Bart. loquitur, q[illegible] bona prius fuerant apud venditorem, ſed bona T[illegible] ante aſſignationem factam Semp[illegible], non erant apud Seium & Titium, quia dico quod [illegible] dominium ipſ[illegible]rum bonorum erat apud Seium & Titi[illegible], qui adierant hereditatem excluſo Sempronio repudiante, nam [illegible] dominium rerum hereditariarum tranſit ad heredes poſt aditionem citra traditionem aut apprehenſionem poſſeſſionis, l[illegible] poſſeſſio non tranſeat. *l. cum heredes ff. de acquir. poſſ.* ideo her[illegible] [illegible]ta hereditate dicitur dominu[illegible] *l. hæc verba. in princ. ff. de hered. inſt.* § *pe*[illegible] *inſt. de hered. qualit. & differ.* & licet Sempronius haberet iu[illegible] legitima in ſingulis corporibus hereditatis [illegible] *ff. ad legem Falcid. l.* 2. [illegible], tamen non dicitur filius dominus talium rerum ante aſſignationem, ſed remanet dominium penes heredes, itaque ante dictam aſſignationem bona aſſignata erant hereditaria in dominio heredum. Proinde quando fuerunt recuperata, reuerſa ſunt ad priſtinam cauſam ex facto aut pacto
ſpſarum partium, quia † factum arbitrorum dicitur factum partium. *l. ſi ob cauſam. C. de usu.* & in facto arbitrorum dicit Anch. *in conſil.* 207 *in quæſtione ſupra adulta* [illegible] *col.* [illegible] Paul. de Caſt. *in conſil.* 318 *Quod autem* [illegible] *lib.* 1. ¶ Non obſtat etiam † quod Bart. loquitur in redemptione, quia etiam hic ſumus in redemptione & in pacto de recuperando, nam vt ſtatim dictum eſt, iſta bona primo loco fuerunt Seii & Titii adeuntium, qui per aditionem facti ſunt domini, ergo dicuntur ab eis recuperari: quare iteratur ac[illegible]tio. *l. verbum, ſoluendi ff. de verb. ſignif.* & licet dicatur in laudo quod p[illegible]nt emere, tamen debet intelligi, id eſt, [illegible]mere aut recup[illegible]rare, ſecundum materiam ſubiectam. gloſſ. & Doct. *in rubr. ff. ſoluto matrimonio* vbi verbum, petatur, expo[illegible]
id eſt, repet[illegible], & eſt generaliter verum † quod verba debe[illegible] 36
intelligi ſecundum ſubiectam materiam, etiam illa impr[illegible] [illegible]anilo *l. ſi vno in princ. ff. locat. l.* [illegible] *ff. de præſcript. verb.* [illegible] *in princ. & l. cum pater.* § *donat.* [illegible] *de leg.* 2 *cum ſimil.* ¶ Secundo reſpondeo, poſito & non conceſſo, verbum [illegible] *mere*, ſtaret proprie, tamen ſatis eſt, quod iſta bona ſemel fuerunt hereditaria & obnoxia fideicommiſſo, [illegible] quod per eorum emptionem reſoluitur aſſignatio facta in cauſam legitimæ, per quam reſolutionem reuertuntur [illegible] pr[illegible]anam naturam rerum hereditariarum per ſupradicta. ¶ Tertio, reſpondeo poſito citra præiudicium veritatis, iſta bona non fuiſſent hereditaria & ſubiecta fideicommiſſo, ſed affecta iure legitimæ, tamen ex quo legitima fuit acceptata in pecunia ipſo Sempronio decedente ſine maſculis, per talem acceptationem pecuniæ bona ipſa factae hereditaria & [illegible] fidei[illegible]commiſſo, nam impediebatur cauſa fidei[illegible] [illegible] propter iu[illegible] legitimæ, ſed ceſſante iure legitimæ acceptatæ in pecunia, proculdubio ſiunt bona he[illegible] & fideicommiſſo obnoxia, quia [illegible] remoto obſtaculo valeat diſpoſitio, quæ alt[illegible] per obſtaculum impediebatur *c. ſi de rerum & beneſ. cleri.* [illegible] amittit priuilegium clericale ob [illegible] [illegible] quia tamen ceſſ[illegible] illud recuperat. per quem dicit Guid. Pap. *quæſt.* 196 quod nobilis perdens priuilegium [illegible] per exercitium [illegible], illud recuperat [illegible] [illegible] Ad [illegible] *in l. vbi ex.* § *ff. de vſucap.* vbi [illegible] impe[illegible] In propoſit[illegible] [illegible] bona [illegible] eſſent ſubiecta fideicommiſſo, [illegible] [illegible]betur in corp[illegible]ibus hereditat[illegible] [illegible]quam acc[illegible] eſt legitima in pe[illegible], & a [illegible] [illegible]ntum [illegible] *in conſil.* [illegible]

colum.3 [illegible] n[illegible] [illegible] ſunt [illegible]
monium [illegible]
in l.ſi certum ff. [illegible] dicere [illegible] videtur in
caſu [illegible] lani nunquam [illegible] aſſi-
gnati Sem[illegible] el quod aſſignatio [illegible]
luta.max[illegible] appoſito [illegible]
41 laudo adiecto, [illegible] temporis p[illegible]
tas cauſæ quod voluerunt arbitri [illegible] po[illegible] tale pacti [illegible]
[illegible] in ipſo laud[illegible] reuerti [illegible] ad Seium & [illegible] x
c[illegible] cauſa ex qua ad eos pertinebant. *l. ſi rem tu §. [illegible]* [illegible] bi
not. [illegible] B[illegible] *de prænd. cred.* [illegible] titatem argum [illegible] an.
m[illegible] 6 *circa fin lib. 6.* Aret. *in conſ.* [illegible] *a quia multa col. 3 in fin. ver. ſic.*
& [illegible] *quod Nicolaus* quid hic dicemus vbi non temporis bre-
uitas inte[illegible] ceſſit ſed actus ſimultaneus, imo ſi bene conſideremus,
impoſſibil[illegible] hic videtur fieri recup[illegible] tionem ex aliqua
c[illegible] diuerſi, cum ab initio actum fuerit [illegible] dimittendis bonis
Tuſc[illegible] lan. Sempronius [illegible] legitimæ [illegible] de eis recuperandis
42 in conditionis euentum. ¶ V[illegible] o[illegible] arguitur ſic, pluralitas
cau[illegible] um non præſumitur, gl[illegible] Do[illegible] *in l. tritticum. in verſu. cogi-
tauit ff. de verb. obl.* [illegible] *l. 7* [illegible] *2 ante med. lib.* nam pluralitas
cauſa un[illegible] oni[illegible] it [illegible] to, quod non præſumi[illegible] be-
tur. *l. quæcumque. ff. de Public.* [illegible] *ff. de cast. cum ſimil.* Itaque
dicēdum eſt volui[illegible] os recuperare bona ex eadem cauſa,
ex qua ad [illegible] os pertine[illegible] nt [illegible] eſt, [illegible] aliter di[illegible] ia, & [illegible] cont[illegible] n-
dit quiſpiam motos arbitro[illegible], ex alia & diuerſa cauſa, probet.
¶ Mem[illegible] fundame[illegible] ta tactis, ſupereſt, vt veniamus ad
confutationem [illegible] g[illegible] in contrarium habit[illegible] um, ex
quorum [illegible] latione res ipſa ſplendidior fiat. Itaque non [illegible] bſtat
43 pr[illegible] um argumentum, quod extincta fuit qualitas fideicom-
miſſi per aſſignationem ex cau[illegible] legitimæ, & quod qualitas ſe-
mel extincta amplius nõ reuiuiſcit, quia [illegible] ocederet argumen-
tum, ſi eſſet qualitas [illegible] in extincta, quia fuiſſent aſſignata
bona in cauſam legitim[illegible] ſimpliciter, [illegible] eſt aſſign[illegible] o
conditionaliter, ſi decederet in [illegible] cu[illegible], quibus defi-
cientibus reſolueretur ſoluta pecunia, ob id extingui non po-
teſt qualitas vltra modum conuentionis aut tenoris laudi. *l. in
agris. ff. de acquir. rer. dom. cum ſimil.* & iſtam diff[illegible] rentiam an extin-
guatur res in totum vel non, nominat[illegible] ponit text. *in d.* [illegible] *l. fir-
mus. §. pactus ne peteret. verſicul. idem dicemus ff.* [illegible] Idem probatur,
nam pignus extinguitur quando res pignorata efficitur credi-
toris. *l. neque pignus. ff. de regulis iuris.* & tamen illud non procedit
quando non omnino efficitur creditoris, ſed reuocabiliter, *l. ex
teſtamento. §. Latinus.* vbi Bart. *ff. de except. rei vendit.* [illegible] in Bartol. *in l. ſi fun-
ta. §. Iulianus, columna penult. circa m[illegible] ff. de damno infecto.* Socinus in
l. 1. columna fin. ff. de legat. [illegible] Itaque qualitas fideicommiſſi in iſtis
bonis Tuſculani non dicitur omnino extincta, etiam quamdiu
fuerint bona apud Sempronium, ex quo ius Sempronii [illegible] ol-
ui poterat, aut ſi fuit extincta illud non fuit [illegible] mpli[illegible] ter, ſed de-
mum caſu reſolutionis d[illegible] ficiente. ¶ S[illegible] undo pro reſpon. re-
peti poſſunt quæ ſupra abu[illegible] e diximus, non poſſe dici extin-
ctionem factam, quæ reu[illegible] cari poteſt, & quod partis ſunt aſſi-
gnationem factam non eſſe[illegible] vel reſolutam fuiſſe. ¶ Non ob-
44 ſtat ſecundum † argum entum [illegible] quod bona etiam libera apud
Sempronium ex cauſa [illegible] næ, [illegible] id quod tranſiuerunt in Se-
ium & Titium [illegible] arc libertatis quia procederet ar-
gumentum, ſi tal[illegible] qu[illegible] fuiſſet ſimplex, aut perpetua, non
obnoxia alicui reſolutioni, ſed hic aſſignatio bonorum Tuſcu-
lani fuit reſtricta, & con[illegible] ata, qua conditione [illegible] ueniente
reſolutum eſt principal[illegible] go & o[illegible] ne[illegible] us qualitates quæ ſi-
ne ſubiecto eſſe non poſſ[illegible], vt ſupra abun[illegible] *um facit
regul. cum principalis ff. de regulis iuris* & ſic [illegible] deret, argumen-
tum quando res tranſiret [illegible] al[illegible] uel[illegible] reſolutio[illegible] m,
nam ſi reſoluitur aſſignatio, impoſſibile e[illegible] q[illegible] ret cauſa
ob quam facta eſt, vt ſupra abunde [illegible] dictum, [illegible] p[illegible] atur iſta
reſponſio ex rationibus aut authoritatibus ſupra add[illegible] tis, cu-
ca dictum Bartolum *de la l. in diem. ff. de aqua pluuiali* [illegible] *& cir-
ca dictam l. aliquando. ff. de condit. & demonſtr.* Imo ex hoc [illegible] cundo
argumento reſultat repugnantia quod [illegible] luatur cau[illegible] legiti-
mæ in dictis bonis eueniente caſu reſolutionis, & quod illa di-
ſtet in perſonis recuperantium. & ex ipſo ſecundo argumento
diſpoſitio laudi inducta ad [illegible] am eſſ[illegible] um, vt eueniente caſu
reſolutionis bona non eſſent [illegible] & in natura legitimæ, ſed
reſtituerentur, ſubrogata pecunia in locum legitimæ, opera-
rentur contrarium effectum. id eſt, indu[illegible] ionem libertatis *con-
tra l. legata inutiliter. ff. de adim. legat. cum ſimil.* ¶ Ad alia argumenta in

contrarium adducta ſup[illegible] n ſepius-
dem reſcrib[illegible] ns, ad *leg. autem ſi* [illegible] *legem* [illegible] *aliudum.* n 45
cuius intellectu laborauit Decius *in dicto conſ. l. 88.* male tamen
declarans, reſpondeo realit[illegible] & id ſenſum iuris, quod venit res
ad here[illegible] em [illegible] uſa fideicommiſſi non hereditaria, quia nun-
quam [illegible] apud heredem ex cauſa heredi[illegible] a, ex quo domi-
nium e[illegible] ſtat in tranſitu ad leg[illegible] rium a morte [illegible] *l.
a* [illegible] *in fin ff. de ſartis.* [illegible] eus eſt in fideicommiſſo vniuerſ[illegible],
cum [illegible] no[illegible] in ſine re [illegible] ſid[illegible] ſſarium, n[illegible] m
reu[illegible] he[illegible] in ex cauſa here[illegible] itaria. *l.* [illegible] *hæres inſtitutus in
princip ff. ad* [illegible] ¶ Poſt[illegible] no conſidero quod vbi in præm[illegible]
dubitatio ali[illegible] mod[illegible] poſſet, hic tamen ipſam clariſſimam
arbitremur in iure & æqui[illegible] mente arbitrorum, ta-
men dubium omne v[illegible] minata con[illegible] ion par-
tis, & quidem iudicial[illegible] m[illegible] o Sempronio ſuperſ[illegible] e
eius vxore, bona iſta pe[illegible] ma[illegible] di [illegible]
quam pertin[illegible] ad ipſo[illegible] S[illegible] ſu[illegible] itum-
tis, deinde [illegible] ita eſt [illegible] onem
libello Sei, quæ confeſſio † [illegible] 46
ſenſum & [illegible] *l.
Ne* [illegible] *de neg.* [illegible] *alimentis §. 1 ff. de al* [illegible] B[illegible] *l.
in l. ſi patrum. C. comm. vtriu iud.* in quibu[illegible]
clarat animum ex priuata [illegible] ex
confeſſione iudiciali. Nec [illegible] ag[illegible] s
alienis, id eſt, arbitrorum, quia agitur [illegible] x
qua cauſa intel[illegible] xer[illegible] arbitros [illegible] s
declarare mentem [illegible] p[illegible]
teſt † quis confiteri [illegible] n alienum [illegible] 47
pr[illegible] batur ex not. *in l. non fatetur. ff. de confeſſ.* [illegible] *decret.* [illegible]
in l. error C. l. de iur. & fact. ignor. in quo[illegible] poſſe
reuocari [illegible] feſſionem [illegible] p[illegible], in[illegible]
autem proprio non poſſit. id con[illegible] o
in facto alieno, niſi probetur error, [illegible] con-
ſiſtit in facto, vtrum quis fuerit talis [illegible] *bona ſ. ht. ff.
de acquir. poſſ.* & poſtquam in binis libellis [illegible] eſt, v[illegible]
riſimile eſt fuiſſe agentes factus certiores de [illegible] ndi vel per
arbitros, vel alias perſonas, quæ facti veritatem [illegible],
& tanto magis † præmiſſa procedunt, quia talis confeſſio eſt 48
veriſimilis, quo caſu ei creditur & ſtatur [illegible] vbi alias non
ſtaretur, puta, quia in materia prohibita. Salic. *in l. ſi mater Cod.
de contrah. empt.* Alexand. *in conſil. 18 lib 4.* Decius *in conſ. 96 colum.*
verſicul. nec obſtat quod talis conf[illegible]. error autem [illegible] confeſſionis
geminatæ non ſolum probatus non eſt, im[illegible] quidem alle-
gatus, quæ tamen allegatio in actus videtur [illegible], etiam in
actu alias præſumpto *l. ſi adulterium cum inceſtu* [illegible] *Pollioni ff. de
adult.* ¶ Secundo conſidero circa iſtam conf[illegible] nem: quod ex
qua cauſa bona Tuſculani pertinerent ad [illegible] & Titium
mortuo Sempronio, hoc ad ius pertinet, [illegible] ſſio † nunquam 49
in iudicio facta præiudicat confitenti, licet erro[illegible] ſit, puta, ſi
quis confiteatur ſe teneri ex contractu, qui [illegible] nam te-
nebitur ex tali contractu. *l. non fatetur.* [illegible] *confeſſ.* Dyn.
in conſil. 10. ante fin. addo text. in l. de ætate. §. pen. [illegible] *verſic cul-
pa ff. de interr. act.* Sed vltra confeſſionem [illegible] ſt pro-
batum facto vt ab effectu, quia Seius [illegible] gil[illegible] ho-
nis tanquam in bonis fi[illegible] commiſſi, quæ in b[illegible] le-
gitim. nõ elegit. ¶ Sed illud hic [illegible] non prætereun[illegible] 50
tum [illegible] probari reuerſa eſſe bona Tuſ[illegible] tam h-
dem, nam ſi non ſolum ex confeſſio[illegible] & Titii,
& ip[illegible] ex [illegible] Sei, qu[illegible] bonis
Tuſculani [illegible] illud argumentum [illegible] ur pars
agens. [illegible] que[illegible] Seius elegit aliqua ex dictis boni[illegible] in legiti-
mam ſuam, [illegible] fuiſſent alii bona Tuſculani ex
precio aliorum bonorum in legitimam electorum, illa non vi-
dentur rec[illegible] in cauſam [illegible] commiſſi, ſed ſubtingat in lo-
cum bonorum [illegible], quæ in legitimam admiſſa aut ele-
cta eſſent, p[illegible] quæ Socinus tradit *in d. conſil. 36 lib 3.* ¶ Aduer-
tendum, [illegible] in hac retorquitione, & quidem eui-
dens, n[illegible] S[illegible] nus loquitur quando filius grauatus eſt precio
bonorum h[illegible] ditariorum acquirit alia bona libera, [illegible] quibus
tertius ius non prætendit, quo[illegible] illa non ſubrogantur in locum
fideicommiſſi, quatenus eſſet le[illegible] ma filii, quia dicitur e[illegible]
ex propri[illegible] pecuniis, non ex bonis fideicommiſſi, ſecu[illegible] eſſet ſi
filius grauatus ex pecunia propria aut [illegible] cta ex bonis legiti-
mæ emeret bona, in quibus te[illegible] tius ius prætenderet: [illegible] am l[illegible] et
emat ex pecunia propria, tamen non poteſt præiudicar[illegible] [illegible]o.

[illegible] *l. ſi[illegible] ad quod noſtrum. de [illegible]* [illegible] in [illegible] qu[illegible] S[illegible] in Tuſ[illegible] pe[illegible] [illegible] rum ſubſtit[illegible] [illegible] [illegible] ¶ [illegible] ſit [illegible] eſt. [illegible] Secundo reſpondeo, quod [illegible] fuiſſet in facultate ipſius Seii [illegible] propriam, ex qua [illegible] impoll. [illegible] omnia bona [illegible] ad integrum tranſdare [illegible], [illegible] ipſi bona ex propria pecunia, & allegando bona [illegible] roga[illegible] locũ propriæ pecuniæ non ſubiectæ fideicommiſſo, [illegible] eludendo ad eum modum mentem ipſius arbitrium, [illegible] minimo vendicando, quę optima bona eſſent totius he[illegible] ad maximum grauiſſimũ aliorum ſubſtitutorum [illegible] ob qualitatem bonorum, ſed etiam pe[illegible] valoris amplitudinem. ¶ Tertio reſpondeo, quod bona [illegible] ut bis id [illegible] exigatur *l. bona fid. ff. de regulis iuris.* Sed Seius [illegible] legitimam in aliquibus bonis Tuſcula[illegible] amplius in eiuſdem bonis legitimam habere, et [illegible] ſubrogationis, quia non potuit ſibi ipſi & iure pro[illegible] pro diſtrahendo, bona ſic electa, alia ſubrogare ad præiudicium [illegible] fideicommiſſariorum, & alias ſequeretur abſurdum. [illegible] grauatus habuit legitimam in certis bonis [illegible] [illegible] pretio emit alia bona a coherede ſubiecta [illegible] [illegible] eueniente caſu fideicommiſſi poſſe filius [illegible] [illegible] rogata in locum legitimę, nam poteſt [illegible] non potuiſſe ſubrogationem facere in bonis in qui[illegible] bus ius [illegible] ¶ Poſtremo [illegible] facultas, † [illegible] videtur o[illegible] per textum *in l. voluntate. ff. quibus modis pignus vel hypoth.* [illegible] communem intellectum Bart. & Doct. [illegible] diſſoluitur alienatio ex antiqua cauſa, redit res ad [illegible] & ſuam cauſam, & reſtituitur creditori, qui conſenſerat alienationi, ius ſuum pignoris [illegible] bona [illegible] fuerunt recuperata ex antiqua cauſa & [illegible] ex quo fuerant adiudicata ipſi Seio [illegible] [illegible] *gloſſ. in l. fin. C. de remiſſ. pign.* dum loquitur de ex[illegible] redemptione pignoris, eſt autem noua cauſa [illegible] non præcedente aliqua neceſſitate redire res ad alie[illegible] ex nouo titulo, puta donationis, legati, aut nuuæ em[illegible] & [illegible] voluntariæ: quod vtcum fundamentum ſi [illegible] perpendatur, validum & eſt, cum videtur ad diſſolu[illegible] difficultatis, etiam ceſſantibus omnibus præ[illegible] ipſa tamen efficaciſſime videntur vigere. ¶ Ex qui[illegible] bus concludo [illegible] Tuſculanum in cauſam fideicommiſſi recidiſſe per redemptionem ſecutam, quod ipſum non ipſos Seium & Titium inficiaſſe crediderim, ſi agerent inter viuos, quos ipſos non ab eorum confeſſione diſce[illegible] eos exiſtimem, licet heres Seii extraneus rei ipſius cupidine illectus ad eam molimine quanto maxime pote[illegible] omnino commendat. ¶ Porro [illegible] opinio partitæ, [illegible] cauſa [illegible] dubio [illegible] non [illegible] *regul.* [illegible] *tal. libro.* tamen [illegible] his ex præmiſſis non vnum aliquod conſtare videtur. ¶ H[illegible] man[illegible] volumen [illegible] per aduo[illegible] [illegible] tenam [illegible] ſplendorem [illegible] & [illegible] quod [illegible] quit [illegible] matem. [illegible] poter [illegible] V[illegible] [illegible] vtrumque Doctor ad

[illegible]

1 [illegible]

[illegible]

4 [illegible]

6 [illegible]

[illegible]

8 *Iuramentum* [illegible] *eſt,* [illegible]

Per iuramentum ad [illegible] *que iudex in cauſa* [illegible] *ibid.*

[illegible] *poſſibilis etiam* [illegible] *falſum* [illegible]

9 [illegible] *verum vocat* [illegible]

In actione [illegible] *referre* [illegible]

9 *Argumentum a* [illegible] *admittitur pluſquam de neceſſitate* [illegible] *ratur, vbi* [illegible] *directum.*

10 *Regulariter* [illegible] *habet electionem* [illegible] *vendi* [illegible]

11 *Argumentum a contrario* [illegible] *ſumitur contra expreſſam diſpo*[illegible] *teſtat* [illegible] *qua* [illegible]

Ar[illegible] *a* [illegible] *debet reſtringi ad limites* [illegible] *num. 11*

12 [illegible] *debet intelligi & interpretari ſecundum poſſibile.*

13 *Diſpoſitio generalis* [illegible] *debet* [illegible] *propter aliqua verba* [illegible] *quibus diſpoſitio* [illegible] *poteſt.*

14 *Statutum quod partes compromittant inter coniunctos,* [illegible] *habet* [illegible] *conſanguineos*

15 *Statut*[illegible] *debet* [illegible]?

16 *An* [illegible] *hereditario* [illegible] *fideicommiſſario, ſi heredi* [illegible] *non ſit re*[illegible] *ſtitutum vel verbo.*

17 *Mandatum ſufficit impleri prout poſſibile eſt, ſi certa forma aliter impleri non poteſt*

18 *Ad* [illegible] *requiritur ſcriptura, quando potuit adhiberi, alias ſit pro*[illegible]

Vbi [illegible] *non poteſt intra terminum aſſignatum, an* [illegible] *poſſit poſt ter*[illegible] *ibid.*

19 [illegible] *in* [illegible] *intelligitur quando quis poteſt reſidere* [illegible]

20 [illegible] *referre ſunt ſeparabilia.*

21 [illegible] *iurare, & iuramentum referre.*

[illegible] *non vitiatur propter alterum, ſub num. 21*

22 *An* [illegible] *iuramenti debeat* [illegible] *licet iuramentum referri* [illegible] *ſit.*

23 *Vbi non agitur de* [illegible] *delicto, omnia cenſentur permiſſa, quæ ſpecialiter prohibita non* [illegible]

Lex loquens de [illegible] *eſt prohibitorium certarum perſonarum &* [illegible] *quæ* [illegible] *aliqua prohibentur illud deferre, & pro aliquibus cauſis deferre* [illegible] *ſub num. 23.*

In prohibit[illegible] *expreſſe prohibitum non reperitur, permiſſum cen*[illegible] *ſetur ibid.*

24 *Appellatio* [illegible] *permiſſa cenſetur.*

25 [illegible]

[illegible] *ſub num. 25*

Probatio dubia [illegible]

26 *Iuram*[illegible] *non referri poteſt* [illegible] *licet ignoret* [illegible] *ſuper ſua credu*[illegible] *litate*

Licet [illegible] *quod quis credat ſit in contrarium, non tamen* [illegible] *ſub num 26*

27 *Facti* [illegible] *quæ* [illegible] *conſtant.*

28 *Iuramentum* [illegible] *eſt* [illegible]

29 *Iudicis partes* [illegible] *ſummopere* [illegible] *& ad lucem perducere.*

CONSILIVM CCIII.

Pro nobili Georgio Malapera Burgenſe Cunei, contra Magnificum Dominum Collateralem Malaperam.

DIVINO ſubſidio ex corde poſtulato. Deferens iuramentum litis deciſiuum, eſt neſcius facti, [illegible] quod [illegible] mentum non poteſt ref[illegible] quæritur [illegible] ſit illud recuſare. Aliqui [illegible] *arg. in gloſſ. in l. iuſiurandum* [illegible] *ad pecunias.* § *2. Præter in verſic.* [illegible] *ff. de iureiurando* eſt † ſpeciale [illegible] quod [illegible] iuramentum [illegible] poteſt, ergo in [illegible] non [illegible] rem [illegible] non poſſit, quia [illegible] debet [illegible] ¶ [illegible] *eodem tit.* [illegible] ex qu[illegible]

[illegible] bet. [illegible] rel. tur lib. 6 [illegible]
4 [illegible] in ſuperpanium. ff. de iur. [illegible]
[illegible] quæ [illegible] cred. quæ iura ad hoc
[illegible] Paul. de Caſtro in conſil. 94. Clarum eſt in iure.
[illegible] tamen nulli videtur deferri ſuper [illegible]
5 [illegible] quis [illegible] [illegible] æſtimatur. [illegible]
[illegible] non debet qui [illegible] vtrancepſ [illegible]
[illegible] in prin. ff. rerum amotarum. ¶ Quibus fun-
damentis non obſtantibus, contrarium puto de iure verius.
¶ Primo [illegible] text. in dict. l. iuſiurandum & ad pecunias. §. non ſem-
6 per [illegible] iuramentum poſſit referri [illegible] in quo ob-
latum [illegible] adhuc cogitur quis iurare, & totum arbitrio iudicis
finiendum eſt, nec hoc quærit lex, vt [illegible] qui [illegible] tenea-
tur, an deferenti poſſit referri ad modum oblatum, ſed rationem præ-
ſtationis iuramenti conſiderat lex, quia per [illegible] iuramenti oblatio-
nem [illegible] ſtituitur qui iudex [illegible] & etiam teſtis l. [illegible] C.
de fideicom. iſta ratio æque militat, ſiue iuramentum poſſit refer-
ri, ſiue non, ergo idem ius vbique [illegible] tuendum. [illegible] ad le-
gem Aquiliam. cum ſimilibus. ¶ Secundo probatur a ſimili, cogitur
7 quis † reſpondere poſitioni: etiam cuius factum certo non in-
telligit. Bartol. in l. 2. §. quod obſeruari. [illegible] de iuramento calumniæ. & in
8 l. final. colum. 3 verſic. quaro verum heres ff. de his, quibus, vt indignis. & † ta-
men iuramentum in quo reſpondetur poſitionibus, licet per
verbum credit, ita nocet, vel prodeſt, ſicut iuramentum deci-
ſorium. oſtenditur, nam ſi reſpondeatur in verbo credit, proba-
tur intentio ponentis, ſi per verbum non [illegible], ita permitti-
tur [illegible] licenter quis ita iuret, atque ſi omnino affirma-
tiue iuraretur, vt notatur in dict. §. quod obſeruari. cur igitur in iura-
mento litis deciſiuo non idem dicemus, cum ſit eadem ratio?
argum. l. non poſſunt ff. de legibus cum ſimilibus. ¶ Non obſtat gloſſ. in
dict. §. ait Prætor. in verſic. datur. quia nihil omnino facit ad rem. nam
gloſſ. vult ſpeciale eſſe in actione famoſa, [illegible] quis teneatur iura-
re, nec referre poſſit, ſed non dicit quod referre non poteſt,
quia deferens neſciat actum, vt ei referri non poſſit, imo et-
iam ſi [illegible] deferens, non poteſt is cui defertur iura-
mentum, [illegible] & ſpeciale eſt in [illegible] actione quod priuatur
quis electione vel iurandi, vel referendi quia ex qualitate illius
actionis cogitur quis iurare præciſe: Sed ex hoc [illegible] non po-
teſt argui [illegible] ergo iurare quis non cogitur [illegible]
non poteſt. nam hoc argumentum benefic[illegible], ſi id ob
referre non poſſet, quia deferens factum non voluiſſet, & ſi
cauſa non admittendæ relationis eſſet ex parte deferentis. ſed
cauſa eſt ex natura actionis, ſeu propter illam actionem [illegible] in
quod alias deferenti referri poſſet. ¶ Secundo reſpondeo,
9 quod † argumentum à contrario ſenſu non ſumitur pluſquam
de neceſſi[illegible] inferatur, ſed limitate ſumitur ad ſenſum directum.
puta, ſtatutum dicit, quod contractus minorum non va-
leat ſine conſenſu propinquorum, ergo à contrario ſenſu ſi
propinquorum conſenſus interuenerit, non irritabitur contra-
ctus ex defectu interuentus: ſed non poteſt argui vlterius vltra
limites ſenſu directi. quod valeat contractus ex ſolo interuen-
to propinquorum, licet aliæ ſolennitates requiſitæ in contra-
ctibus minorum non interuenerint, quia hoc ex ſenſu directo
non infertur [illegible] ita declarat Anton. de Butr. in c. [illegible] cum apoſtolica. in vl-
timo notab. de his. quæ fiunt à prælat. Dec. in l. 1. in vltimo notab. ff. de officio
eius. in conſil. 110. colum. 2. & in conſil. 386. colum. 3. Similiter, ſi arbiter
coram quo centum petebantur condemnet in ſoli tantum,
[illegible] argumento à contrario ſenſu, quod in aliis ſolidis
non [illegible] ſed non ſequitur, ergo abſoluit. Cornel. con-
ſil. 9 [illegible] Decius in conſil. 216. colum. fin. in propoſito ex gl.
in di. §. ait [illegible] bene in[illegible] tur à contrario ſenſu quod regulari-
10 ter † is cui defertur iuramentum, habet electionem vel iuran-
di, vel referendi. cum ſpeciale ſit in iudicio famoſo, vt ea ele-
ctione priuetur, ſed vlterius non ſequitur poſſe recuſari iura-
mentum quod referri non poteſt: nam hoc eſt omnino ſepa-
ratum ab eo, quod dicit gloſſ. in ſenſu directo. & ex ſeparatis non
infertur l. [illegible] in vltimo exuli ff. de minor. cum ſimil. quæ not.
ſunt. ¶ Non [illegible] lex in iniuſtitiæ turpitudinis, quia text. bene
dicit [illegible] manifeſta eſt turpitudo non iurantis, nec referen-
tis [illegible] tur, ergo non cogitur quis iurare, ſi eam facul-
ta[illegible] quia ei et [illegible] contra text. in dict. l. iuſiur. &
ad [illegible] quo [illegible] non licet [illegible] à contrario
ſenſu [illegible] cap. [illegible] de foro competenti not. Modern. in l. 1.
11 vbi [illegible] in 8. in 4 notab. ff. de officio eius. ſicut etiam † non ſumitur
argumentum à contrario ſenſu contra expreſſam diſpoſitio-
nem reſtat [illegible] in conſil. 58. colum. 3.
verſ. & ad hoc bene facit C[illegible] conſil. 133. colum. 3. lib. 1. ¶ Secun-
do [illegible] ſpondeo [illegible] ſpond[illegible] ad gloſſ. quod argumen-
tum à contrario ſenſu [illegible] ad limites [illegible] directi,
hoc modo [illegible] turpitudo [illegible] nolle, nec iurare, nec iu-
ramentum [illegible] non eſt manifeſta turpitudo ſi quis ve-
lit, aut iurare [illegible] re, ſed non debet extendi hoc argumen-
tum à contrario [illegible] limit[illegible] & [illegible] ſenſus dir[illegible], quod
vbi iuramentum referri non poteſt [illegible] poſſit, [illegible] en-
ſu directus hoc includit ¶ [illegible] reſpondeo, [illegible] de- 12
het intelligi & [illegible] pretari ſecundum poſſibile, & prout poſſi-
bile eſt. l. ſtipulatio iſta. §. [illegible] ad [illegible] de verb. oblig. facit text. in l. regula.
§. [illegible] ff. de iur. [illegible] quod diſpoſitio generalis non 13
debet reſtringi [illegible] propter aliqua verba [illegible] prolata in quibus
diſpoſitio ve[illegible] non poteſt [illegible] quo [illegible] con-
ſil. 81. colum. [illegible] lib. 6 [illegible] & Ang[illegible] §. lex [illegible] ad l. [illegible]
Falcidiam. vbi ſtante ſtatuto [illegible] quo [illegible] 14
compromittere inter [illegible] ſtatu-
tum non habet locum in ea extraneis litigantibus, [illegible]
nes conſanguineos non habe[illegible], quia [illegible] 15
debet prout poſſibile eſt ¶ Simili[illegible] 16
ctiones hereditariæ in fideicommiſſarium [illegible]
reditas re[illegible] vel verbo, ante quam reſtitutionem [illegible]
ſario non competit, nec bona ad eum pertinent, [illegible]
contra poſſeſſ[illegible] reſ. ipſorum, ſed tantum [illegible]
mento contra heredem grauatum, vt reſtituat. [illegible]
leg. gloſ. in l. ſi ſine C. ad Trebell. Iſtud tamen proced[illegible] poſ-
ſibile eſſet hereditatem reſtitui defuncto he[illegible]
herede qui reſtituere poſſit: nam tunc tranſeunt [illegible]
ria in fideicommiſſarium ſine alia reſtitutione l. [illegible]
C. ad Trebell. ¶ Simile videmus [illegible] in mandato quod [illegible] 17
cit, prout poſſibile eſt ſi eius forma aliter impleri [illegible]
l. Celſus. ff. de arbitr. cap. cum dile[illegible] de dolo & contumacia [illegible]
reſtitutione ſpoliatorum. cum ſimilib. [illegible] Abb. in conſil. [illegible]
¶ Similiter [illegible] ad probationem [illegible] 18
telligitur, quando poteſt ſcripturis [illegible]
ſcriptura per [illegible] Oldr. in conſil. 254. quia [illegible]
[illegible] ad illud obi[illegible] videmus [illegible] quod vbi [illegible]
poteſt intra terminum aſſignatum, [illegible] non poteſt [illegible]
num l. [illegible] de ad[illegible] cap. ex ratione. de appellationibus [illegible] con-
ſil. 40. colum. 1. lib. 2. ¶ Similiter ius canonicum loqu[illegible] 19
[illegible] in diuinis, intelligitur quando [illegible] poteſt [illegible]
reſidere ſine periculo perſonæ aut rerum [illegible] non
tenetur reſidere. Calder. in conſil. [illegible]
ſtæ, in quantum permittit iuramentum [illegible]
quod ſi referri non poſſit, non [illegible]
militat diuer[illegible] ratio, quando [illegible]
veritatem intelligit, non poteſt [illegible]
quia parere legem quam [illegible] quod
aduerſarius iuraret, æquum vide[illegible] debet [illegible]
ſertur, ſed quando deferens ignorat [illegible] actum [illegible] iniquum ſi
aduerſarius illud [illegible], quod iurare non tenetur ¶ [illegible] on 20
iurare & iuramentum referre ſunt [illegible] quis
iurare licet non referat & poteſt [illegible] licet non iuret:
imo ſunt adeo ſeparata quod ſimul non [illegible] non
poſſet quis † & iurare & iuramentum referre, itaque vtrum- 21
que valeat: ſed in ſeparabilibus vnum in [illegible] propter alte-
rum. l. 1. § penult. [illegible] Bartol. & Doct. [illegible]
§. quoniam. ff. ſi certum peta. [illegible] de donat. [illegible] et 22
ergo iuramentum referri non poſſit, non debet [illegible]
iuramenti, quæ ſtare non poteſt in relatione [illegible]
ferri poteſt, facultas detur [illegible] vel [illegible]
ferendi. ¶ Quarto reſpondeo, † quod vbi non agitur [illegible] 23
ſeu delicto omnia cenſentur permiſſa quæ ſpecialiter prohibi-
ta non reperiuntur. cap. inter corporalia. [illegible] pral. [illegible]
cliar. in conſ. 243 [illegible] ad [illegible] ¶ [illegible]
de iuramento, eſt promotorum [illegible] perſon[illegible] cau-
ſarum, qui [illegible] prohibentur illud [illegible] re, & pro
aliquibus cauſis deferri non poteſt. l. ſi patronus. [illegible]
tur. ſed in prohibitionis quicquid expreſſe prohibi[illegible] re-
peritur, per[illegible] cen[illegible] tur. l. [illegible] §. 1. ff. de proc. [illegible] §.
quod eu. ff. ex quibus cauſ. maior. l. ab ea parte [illegible] omnis [illegible] ap- 24
pellatio cenſetur per[illegible] a, quæ expreſſe prohibita non reperi-
tur. gloſſ. in l. q. [illegible] ff. de [illegible] vend. [illegible] in conſil. 165. [illegible]
qua quæritur an ſeruus Leonorus. & illam gloſſ. in dict. [illegible]

cit

d[illegible] ſingularem Bald. *in conſil.* 141 *Tranſiſſo verbo conſilium ſtatuti.* [illegible] *poſt med. lib.* 1. notat idē [illegible] Bald. *in l. vni.* [illegible] *ſi de momentan. poſſeſſ.* ſimiliter omnis [illegible] præſcribi poteſt, quæ prohibita non reperitur Socin. *in conſil.* 4. *in* 4. *dub. colum.* 5. *lib.* 3. & quilibet he[illegible] poteſt, qui prohibitus non reperitur Cornel. *in conſ.* [illegible] 5. *colum.* 2. *libr.* 1. & matrimonium quilibet contrahere poteſt, qui prohibitus non reperitur. Aret. *in conſil.* 1, *colum.* [illegible] ſimiliter teſtari omnes poſſunt, qui expreſſe prohibiti non reperiuntur quia edictum de teſtamentis eſt prohibitorium certarum
7 perſonarum gl. ff. & Bartol. *in l. ſi quæramus. ff. de teſtam.* ideo † meretrix habet factionem teſtamenti actiuam & paſſiuam, quia expreſſe prohibita non reperitur. Iaſ. *in conſil.* 37 *colum.* 2. *lib.* 4. Imo fauorabilior eſt cauſa permiſſionis quam prohibitionis. Socin. *in conſil.* 216. *colum.* 15. *verſic. amplius dico lib.* 2. alleg. Bart. *in l. ſi ita quis* §. *ea lege ff. de verb. oblig.* Et in te[illegible] iuramenti, quod illud offerri poſſit ſimpliciter & generaliter, eſt text. *in l. iuſiurandum & ad pecuniam.* §. *ait Prætor. ff. de iureiur.* ibi text. dicit: eum à quo iuſiurandum petitur, ſoluere aut iurare cogam & ſic deferens habet regulam iuris pro ſe, quod is cui defertur, tenetur iurare vel ſoluere, nec diſtinguit text. an offerens iuramentum ſciat factum, vel non, ergo pars veniens contra regulam debet exceptionem ſuam clare & liquide probare, quod iurare non tenetur. *l.* 1. & 2. *ff. de except.* ſed iſta exceptio quod iurare non tenetur, quia iuramen[illegible] non [illegible] eſt, non probatur, *ex d. l. manifeſtæ.* q[illegible] non dicit quod ſi deferens referri non poſſit, non ten[illegible] quis iurare [illegible] electionem eius cui defertur. ¶ Sal[illegible] negari non poteſt, quin ſit dubietas circa hoc: ſed probatio dubia non rele[illegible] *cap. in præſentia de probat. l. inter ſtipulantem.* §. *ſi ſti*[illegible] *de verb. oblig.* ideo ſtandum eſt regulæ ſecundum [illegible] Bart. *in l. quod* [illegible] *ff. ſi quis cauſ.* [illegible] *in l.* 2. *ſuper.* [illegible] *ff. ſi quis in ius vocat.* [illegible] videtur eſſe text. *in d. l. iuſiurandum &* [illegible] *ſemper.* [illegible] quod iuramentum non ſemper referri pote[illegible] deſ[illegible] ex qualitate perſonarum, vel re[illegible] videtur velle ille text. quod ſi ex qualitate perſonæ [illegible] poſſit referri, quia facit veritas ignoretur, ni[illegible] poſſit. Ex quo text. aliter infero, remouendo [illegible] videlicet quod imo † referri poteſt [illegible] deferenti, quia licet factum ignoret, [illegible] ſuper credulitate ſua, id eſt an credat ita eſſe pro[illegible] hoc inconueniens debet, quia non eſt ne[illegible] iuramentum eo modo quo delatum eſt: [illegible] §. *non ſemper* [illegible] referre poterit de credulitate, ſi [illegible] ignoratur ſuper veritate referri non poſſit, qu[illegible] quis iurare de credulitate quid cre[illegible] alieno, vt ſupradixi, & licet veritas eius quod quis [illegible] non tamen periurium quis incurrit. [illegible] *1. quæſt.* 6. *cap.* 5. *de iureiur.* Bald. *in l. de tutela colum.* 1. [illegible] ¶ Non obſtat *d. l. Marcellus in prin. ſecundum annotata*[illegible] quia [illegible] eſſe quem iurare de facto alieno, ſed [illegible] defertur ſuper facto alieno, ſed ſuper facto proprio, id [illegible] quid ipſe ſciat, vel credat, aut in animo habeat, † facti enim [illegible] quæ in animo conſtant *l. bonæ fidei. ff. de acquir. rer. domin.* Iaſon *in l.* 1. *in princ. colum.* 7. *ff. de acquir. poſſ.* Amplius dico, etiam † de alieno facto iuramentum offeratur, cogi videtur quis iurare quid ſciat, ſeu credat, prout hic fuit delatum. *per gloſſ. in d. l. fin.* [illegible] *de pignorat. in verſic. ſubiure. verſic. ſed quid ſi dicat.* quæ gloſſ. *in prin. per illum text.* vult quod quis iurare cogatur, licet referre non poſſit: nam iſto caſu, quando iuramentum ita offertur quid [illegible], vel credat, omnis ceſſat timor periurii, de quo *in d. l. Marcellus*, conſequenter ceſſat legis diſpoſitio. *l. adigere.* §. *quamuis* [illegible] *patronatus* [illegible] *ad appella. in.* Etenim, vt ſupra dictum eſt, licet crederet [illegible] & [illegible] eſſet alia, non incide[illegible] in periurium. ¶ Poſtremo in dubio pronunciandum
3 eſt [illegible] eſſe vel † iuramentum [illegible] præſtandum, nam [illegible] eſt damnoſum, [illegible] conſulitur [illegible] dicto Paul. de Caſtr. *in l.* 1 *colum.* 1. *ſi quis cautio.* & [illegible] *colum.* 3. Dec. *in conſil.* 162. *colum.* 2. Denique iſtud iuramen[illegible] præſtan[illegible] *ff. de in arrogat. corp.* [illegible] *ff. de legib.*
29 [illegible] *ff. de heret.* [illegible] ſummopere iurare, & ad hicam pe[illegible]
[illegible]

quibus [illegible] dub[illegible] quæ à Ma[illegible] Sena [illegible] ſuppoſita [illegible].

SVMMARIA

1 *In riuo non poteſt ad*[illegible] *contra vniuerſitatem.*
2 *Ex ceſſatione ſolutionis* [illegible]
3 *Riuus non continuus* [illegible] *non dicitur publicus* [illegible]
4 *Quando* [illegible]
5 *Præſumitur vniuerſitas* [illegible] *que ſunt in* [illegible] *loci ipſius vniuerſitatis, vel ea quæ frequentar ſunt.*
6 [illegible] *non tamen probabilis ignorantia*
7 *Exceptio* [illegible] *quomodo* [illegible]
8 *In riuo publico poteſt* [illegible] *fabricari dummodo non ſit nauigabilis, quoniam* [illegible] *dicuntur publici* [illegible] *& quod non inferatur damnum* [illegible]
9 *Conſenſus probatur ex antiquitate temporis.*
10 *Vbi agitur de magno præiudicio, præſumitur conſenſus ex antiquitate temporis.*
11 *Facta verbis ſunt fortiora, ad demonſtrandum voluntatem hominis*
12 *Qualitas reſpecta factorum, quæ ſine loquela* [illegible] *& per ſolum effectum exprimunt voluntatem ſuam.*
13 *Viſa & exemplo prælati* [illegible] *quam verbis.*
14 *Exigens* [illegible] *adminiſtratorum* [illegible] *approbare geſta per eum,* [illegible] *adminiſtrauit.*
15 *Communitas approbans molendini ædificationem, non amplius reprobare non poteſt*
16 *Quando requiritur expreſſus conſenſus partium, non ſufficit tacitus, qui ex facto colligitur.*
17 *Riuus quando dicatur publicus*
18 *Vbi ſolum eſt publicum, ædificatum ſuper deſtrui non debet, niſi fuerit ædificatum ſuper via publica.*
19 *Quando ædificatum deſtrui poteſt in ſolo alieno*
20 *In dubio contractus* [illegible] *quam* [illegible]
21 *Ignorantibus culpa* [illegible] *non poteſt* [illegible] *quando non leguntur ordinamentum,* [illegible] *publicatum*
22 *Verum ex capite ignorantiæ* [illegible] *debeat reſtitutio in integrum hoſpitali Cheris.*
23 *Minor reſtituitur in integrum* [illegible] *qui contractum ex ſua parte non impleuit.*
24 *Eccleſia, minor & vniuerſitas æquiparantur.*
25 *Contractus non annullatur ob implementum non factum, niſi* [illegible] *ad implendum, vel culpa debentis implere.*

CONSILIVM CCIV.

Pro rectoribus hoſpitalis Cheris contra vniuerſitatem eiuſdem loci.

DIVINO ſubſidio ex corde poſtulato. Vniuerſitas Cheris vult priuare rectores hoſpitalis ipſius loci commodo [illegible] nius molendini ædificati ſuper quodam riuo, quem vniuerſitas prætendit ad ſe pertinere, quæritur quid iuris? ¶ Videretur dicendum prima fronte cauſam vniuerſitatis potiorem eſſe nam talis riuus dicitur publici iuris. ¶ † Ideo nō videtur ſi eo licita ædificatio molendini, niſi de licentia ipſius vniuerſitatis, 1
præſuppoſito quod de conſuetudine aut priuilegio vniuerſitas Cheris iuriſdictionem habeat: per ea quæ ſcribit Bartol. *in* [illegible] *colum.* 1. *n.* 2. *quæſt. ff. de flumin.* Ideo videtur quod tale molendinum ædificatum in ſolo alieno cedat ſolo. §. *cum autem Inſt. de rer. diuiſ.* vel quod ſit licitum hominibus Cheris tale molendinum deſtruere propria authoritate. *l. quemadmodum* §. 1 *ff. ad legem Aquiliam l. ſi vero.* §. *ad* [illegible] *ff. quod vi aut clam.* Bartol. *in d. l.* [illegible] *colum.* 4. *quæſt.* 7. ¶ Secundo principaliter dicitur factum ſtatutum de antiquo per ipſam vniuerſitatem, quod pro omnibus ædificiis factis ſuper ſolo ipſius vniuerſitatis, ſoluatur certa penſio in ſingulos annos per poſſeſſores ipſorum ædificiorum, & quod rectores ipſius hoſpitalis talem penſionem non ſoluerunt, † ergo ex ceſſatione ſolutionis videntur cecidiſſe à iure 2
ipſorum *l. ſi. C. de iure emphyt.* [illegible] *C. de ſacroſanct. eccleſ.* & in cenſu annuo, quod ceſſans ab eius ſolutione cadat à iure ſuo, tradit Bal. *in conſ.* 177 *col.* 2. *lib.* 3. & *in conſ. Super ſani* [illegible] *lib.* 3. Sed præmiſſis non obſtantibus contrarium puto de iure verius, quod rectores dicti hoſpitalis nullo modo moleſtari poſſunt in ipſo molendino, ſequentibus fundamentis ¶ Et primo conſidero quod riuus dicti molendini non † eſt 3
perpetuus nec continue fluit, adeo non dicitur publicus [illegible] uniuerſitatis, & eius dominium ad eos pertinet, qui ab vtraque parte ipſius riui prædia poſſident, quando neſcitur cuius ſolum antequam pleniùs [illegible] haberet ita Bart. *in tract.* [illegible] *colum.* 4. *verſic.* [illegible] *quæratur.* ſequitur Alex. *in conſil.* 194 [illegible] *lib.* [illegible] ſic ita præ[illegible] quod riuus [illegible] priuatus, [illegible] vniuerſitas [illegible] in eo ha[illegible] [illegible] ædes habeo. *ius corpus.*
tempore.

competit. ff. de ſeruit. vend. nec poteſt vniuerſitas experiri contra re-
ctores hoſpitalis ſine iure & actione *l. pupillo. §. vidcamus. ff. de ne-
go. geſt.* ¶ Secundo dico, poſito & non conceſſo, quod ius iſtius
riui ad vniuerſitatem pertineret, adhuc tutiſſimi rectores ho-
ſpitalis ex cauſa præſcriptionis, nam acquiſita eſt ſeruitus hoſpi-
talis ducendi aquam ex iſto riuo ad molendinum ſuum ſpacio
decem annorum, cum agatur inter præſentes, & habeat ſerui-
tus aquæ ductus cauſam continuam, quia continue ſtat aquæ
ductus, & concurrat ſcientia & patientia ipſius vniuerſitatis e-
tiam ſine allegatione alicuius tituli, vt habetur *in l. ſeruitutes la
grande. & l. penultim. ff. de ſeruit. in l. 1. Cod. eod. tit.* Alexand. *in conſil. 69.
colum. lib. 5.* Iaſon *in l. 1. in prim. colum. 17. verſic. & vltra Bartol. ff. de ac-*
4 *quir. poſſ.* quinimo † licet ſeruitus habeat cauſam diſcontinuam,
adhuc præſcribitur decem annis inter præſentes, & viginti in-
ter abſentes, data ſcientia & patientia aduerſarii, ſi titulus alle-
getur. gloſſ. Bartolus & Doctor. *in dict. l. ſeruitutes. magna. in verſ. ceſſ.
certam* Alexandrinus *in conſilio 108. columna fin. libr. 2.* Bartol. *in l.
qui in aliena. in princip.* & ibi Iaſon *column. penult. vn. poſt med. verſicul. 3.*
Bartolus *ind. tit. ff. de acquirend. hereditat.* ſed in caſu noſtro rectores
hoſpitalis vſi fuerunt hoc molendino per tempus longiſſimum,
ſcientibus & patientibus hominibus Cheri, quæ ſcientia euí-
dentiſſime probatur. Primo ratione vicinitatis loci, quia mo-
lendinum conſtat prope mœnia ipſius loci Cheri, aut non lon-
ge ab eis diſtat, & in ipſo molendino continue verſantur homi-
nes Cheri, ex qua vicinitate locorum & conuerſatione ſcien-
tia præſumitur *l. ſi vacua. C. de nupt. l. fin. ff. de donat. abord. ſacien cap.
5 ... clam. de præſumption.* Amplius, vniuerſitas † præſumitur ſcire
ea, quæ ſiunt in iudicio loci ipſius vniuerſitatis, vel ea quæ fre-
quenter fiunt. Aretinus *in conſilio 42. columna final.* quanto magis
præſumitur ſcire de vno molendino, quod dicitur notorium
facti permanentis, in quo nulla omnino ignorantia conſiderari
poteſt. *l. 2. §. ex actu. verſic. roſtru. ff. de origin. iur. l. 2. ff. de ſeruis l. regula.
§. ſed & facti. ff. de iuris & fact. ignorant. l. ſed & ſi pupillus. §. præſcribere. ff.
de inſtitut. cap. illud. de cleric. excommunic. cap. euidentis de accuſat.* Imo
6 nocet etiam in notorio facti tranſeuntis probabilis cadit igno-
rantia. *dicto cap. quanto de præſumptionibus. capit. quod dictu. 41. diſtinct.*
quæ duo iura ad hoc citat Abbas *in conſil. 100. column. 1. in fin. libr. 1.*
Vnde cum ſit tutum hoſpitale exceptione præſcriptionis etiam
longiſſimi temporis, non videtur dubitandum, quia exceptio
præſcriptionis, dicitur litis finitæ, & impedit litis ingreſſum. *l.
ſi ... In Bartol. ff. pro tio. leg. ſunt in fin. Cod. de præſcription. triginta vel
quadraginta annorum.* Bartol. & Doct. *in l. fratris. C. de tran. act.* Gui-
do Papæ *quæſt. 16. column. ... poſt medium* Capel Toloſan. *quæſt.
67.* & hoc ſine dubio procedit cum iſta exceptio præſcriptionis
incontinenti probari & liquidari poſſit, cum alias litis ingreſ-
ſum non impediat. Baldus *in l. ſi quem. Cod. ne de ſtatu defunct.* De-
cius *in l. fin. colum. ... poſt medium. in 10. notab. Cod. de edicto diui Adriani
7 tollendo.* ¶ Aduertendum † tamen eſt circa iſtas exceptiones litis
finitæ quod ſi oppoſita aliqua exceptione huiuſmodi, Iudex
procedat ad vlteriora, ex hoc proceſſus nõ redditur nullus, ſed
reſeruetur talis exceptio ad merita cauſæ, præterquam in exce-
ptione rei iudicatæ qua oppoſita non poteſt Iudex ad vlterio-
ra procedere. Ita Paulus de Caſtro *in conſil. 247. in cauſa quæ verti-
tur ... colum. 3. poſt med. libr. 1.* ¶ Tertio, poſito & non conceſſo,
8 riuus de quo agitur non eſſet priuatus, ſed publicus, adhuc in
tali riuo aut flumine licite molendinum ædificari poteſt, modo
non ſit nauigabile & fiat molendinum ſine damno vicinorum,
quia talia flumina dicuntur publici vſus. *l. riuorum. ff. de rerum diui-
ſione.* ita tenet Alexandrinus *in conſil. 137. column. 1. ver. & diceretur
hic. libr. 6.* in tali enim flumine non nauigabili circa ædificatio-
nem, locus eſt præoccupationi, dummodo non inferatur da-
mnum vicino, vel niſi præoccupans negligat perficere. Paulus
de Caſtro *in conſilio 412. ad id de quo quæritur. libro 2.* ſed flumen de
quo agitur non eſt nauigabile, nec aliud nauigabile facit, er-
go, &c. Quinimo ad impediendum talem ædificationem non
ſufficeret quodlibet damnum vicinorum, ſed requiritur quod
illud ſit magnum & conſiderabile, vt in terminis molendini
tradit Cornelius *in conſilio 268. column. final. lib. 4.* vbi Cornel. pul-
chre loquitur in hac materia, ex cuius dictis redditur quæſtio
extra omnem dubitationem. ¶ Quarto, poſito, & non conceſ-
ſo, flumen, de quo agitur, pleno iure ſpectaret ad ipſam vniuer-
ſitatem, tamen moleſtari hoſpitale non poteſt, quia dico quod
molendinum fuit ædificatum de licentia & conſenſu ipſius v-
9 niuerſitatis, qui † conſenſus probatur ex antiquitate temporis.
l. ſi filius. C. de hered. pet. vbi Bald. tradit Alexand. *in conſil. 79. column. 2*
in fin. libr. 1. Aretin. *in conſil. 36. caſus tal. eſt.* vbi Aret. quod in teſta-
mento Cardinal. præſumitur interueniſſe licentia Papæ ex an-
tiquitate temporis, tradit Felin. *in cap. ſicut colum. antepenult. verſic.
prætorea dubio. de re iudic.* Decius *in conſ. l. 409. column. 2.* Iaſon *in dict.
l. qui in alien. in princ. colum. penult. ver. ego etiam teneo. ff. de acquir. heredit.*
late Modern. *in l. 1. Cod. quia aliena.* & licet iſtud non procedat niſi
vbi agitur de modico præiudicio. Bartol. *in quæſt. incip. mulier ha-
b. ... amplum patrimonium. colum. fin. per text. in l. nullo. Codic. de rei vendic.*
Alexand. *in l. qui aliena. in princ.* Iaſon *in conſil. 106. column. 3. circa med.
libr. 1. & in conſil. 148. column. penult. in fin. lib. 4.* tamen dico quod hic
non agitur de magno præiudicio vniuerſitatis. imo potius de
commodo, cum ipſum molendinum deſeruiat neceſſitatibus
loci, & ipſi loco ſit admodum commodum & neceſſarium. ¶ Non
omitto tamen quod etiam † vbi agitur de magno præiudicio, 10
præſumitur conſenſus ex antiquitate temporis, quãdo eſt tem-
pus, cuius initii memoria non extat in contrarium. Abb. *in cap.
peruenit. per gloſſ. ibi. de empt. & vendit.* Iaſ. *in conſil. 140. column. 3. poſt
med. libr. 4. & latius dixi in tractat. de antiqu. tempor.* Quinto dico, quod
non ſolum interuenit conſenſus vniuerſitatis tacitus præſum-
ptus ex antiquitate temporis, vt ſupra proxime, ſed etiam ex-
preſſus, nam communitas Cheri ... ordinamentum,
quod pro rotis dicti molendini ſoluentur duo floreni ſingu-
los annos, ex quo ordinamento clariſſime approbatur ædifica-
tio ipſius molendini, quia facto datur voluntas intelligi. *l. ... ad.
reſpondet non tantum verbis. ff. rem rat. habet.* imo † facta verbis ſunt 11
fortiora ad demonſtrandum voluntatem hominis. *l. ſi tamen. §.
ſi quis dicat. ff. de edil. ... cap. dilecti. ſecundo* vbi Decius *in ... notabil. de
appellat.* & dicit ... *in l. non ignorat. column. 1. C. qui accu. non poſſ. ...*
quod facta vero proximiora ſunt quam nuda vocabula, cum
etiam plerunq; aliqui fictitie vel blanditorie loquantur, quod
dictum refert Iaſon *in conſ. l. ... column. 1. lib. 4.* inferens magis pro-
bari filiationem ex tractatu quam ex ſola nominatione verba-
li. Alibi tenet idem Bald. *in c. ſuper literis. column. 5. de reſcript.* quod
nullum eſt maius mentis noſtræ teſtimonium † quam qualitas 12
inſpecta factorum quę ſine loquela ſe intelligunt, & per ſolum
aſpectum imprimunt ſuam voluntatem, refert Iaſ. *in conſ. ... col. 2.
in fin. lib. 3.* Alibi dicit text. *in cap. in ſacerdotib. 16. diſtinct.* † quod natu
& exemplo prælati quis magis inſtituitur, quã verbis, & ma- 13
gis in terminis, quod inducatur approbatio ædificationis mo-
lendini ex illo ordinamento, facit quod dicimus induci appro-
bationem teſtamenti ex eo quod petit quis legatũ in teſtamen-
to relictum. *l. ſi pars. §. illud. l. pen. ult. §. fin. & l. fin. ff. de inoffic. teſtament.*
Bartol. *in l. poſt legatum. ff. de his quibus vt indig.* gloſſ. & Doct. *in l. alia.
C. eod. tit.* Petendo igitur communitas florenos duos pro rotis
molendini neceſſario approbat ipſius molendini exactionem,
fortiter facit text. *in l. ad ſolutionem. ff. de re iudic.* vbi ex eo ſolum,
quod quis petit dilationem ad ſoluendum iudicatum, cenſetur
ſententiam approbare. Ad idem facit quod ſcribit Paul. de Ca-
ſtro *in conſil. 1. piſto verius. lib. 1.* vbi † quod exigens rationem ad- 14
miniſtratorum cenſetur approbare geſta per eum qui admini-
ſtrauit. Imo dico ex tali ordinamento neceſſario induci appro-
bationem molendini, quia alias ſine approbatione cenſus an-
nuus imponi aut exigi non poſſet. *d. l. poſt legatum. ff. de his quib. vt in-
dig. reg. ex eod. de regul. iur. lib. 6.* ſic etiam dicimus induci aditionem
hereditatis ex actibus qui fieri non poſſunt citra ius & nomen
heredis. *l. pro herede. in princip. & l. gerit. ff. de acquir. hered. cum ſimilibus.*
ſic etiam inducitur ſocietas tacita ex actibus qui citra ius & no-
men ſocietatis fieri non poſſunt. Ant. de Butr. *in conſ. 73. per text. in
l. in libera. ff. de ritu nupt. & l. in concubinatu. ff. de con. ub.* Idem tradit
Anch. *in conſ. 302. materia column. 2.* Alex. *in conſ. 57. col. ... in fin. libr. 4.*
& alibi ſæpe Doctor. Itaque cum ſemel approbauerit † com- 15
munitas molendini ædificationem, eam amplius reprobare non
poteſt. *l. ſi arbitro. ff. ... d. cogan. l. quæ ſatiſdare. ff. de proc. l. ſi quis te-
ſtibus. C. de teſtibus. l. ſi creditores. ff. de priuileg. credit. regul. quod ſemel pla-
cuit. libr. 6.* maxime, quia talis conſenſus qui ex facto colligitur,
dicitur expreſſus. Socin. *in conſil. 80. col. penult. verſ. ſed ad hoc reſpon-
detur. libr. 2.* Contra Soc. tamen adduco Rot. *deciſ. 380. ſi Iudex de-
legatus. in nouis.* vbi † quando requiritur expreſſus conſenſus par- 16
tium, non ſufficit tacitus, qui ex facto colligitur. Sed dictum Ro-
tæ poſſet procedere, quando requiritur expreſſus cõſenſus pro
forma, quæ impleri debet in forma ſpecifica, & pro dicto Soc.
adduco Fed. de Senis *in conſil. 1, 6. punctus talis eſt. Petr. colum. fin. circa
med.* vbi quod tantum valet renunc. beneficii, quæ fit facto ipſo
illud dimittendo, ſicut illa quæ fit verbo, per text. *in c. ex ore. de his
quæ fiunt a maior. part. cap. & in cap. fin. de vit. & honeſt. cler.* Ex præmiſſis

[illegible] ¶ Secundo [illegible] cus præoccupa [illegible] te dam [illegible] radicti. ¶ [illegible] tio respondeo, [illegible] tutum est hoſpitale per exceptionem præſcriptionem. ¶ Quarto respondeo, quod etiam ceſſante præſcriptione [illegible] quod ipſa molendini ædificatio approbata fuerit ex [illegible] te per ipſam vniuerſitatem Che [illegible]. ¶ Non obſtat [illegible] molendinum poſſe deſtrui propria authoritate, [illegible] non [illegible] ædificatum [illegible] vniuerſitati [illegible] talis. Secundo respondeo, quod [illegible] ædificatum ſuper ſolo publico deſtrui [illegible] publica. ¶ Cornel. [illegible] col. 7. lib. 4. ¶ [illegible] tio respondeo, quia deſtrui non potest ædificatum in ſolo alieno [illegible] contra vel præter voluntatem domini. [illegible] Caſtren. conſ. 334. [illegible] 2. circa med. lib. 2. pro quo text. in l. [illegible]

[illegible]

[illegible] pro quo etiam in du [illegible] nunc [illegible]. [illegible] de relig. cap. fin. de reiud. [illegible] Aymo Crauetta ex Sau [illegible] ano Iuris [illegible] multus

SVMMARIA

1 Pernoctasse [illegible] ſtuprum quando ſit ſine cauſa.
2 [illegible] mouere [illegible] cum hæredibus mariti, cum debeant ei alimenta [illegible]
3 [illegible] nocturno tempore fecerit animo recedendi.
4 [illegible] non remouetur, nam [illegible] non habeat animum remouendi.
5 Suſpicio argui [illegible] ex loco qua ſitus clam.
6 Quando [illegible] animo ſtuprandi.
7 [illegible] quando receſſit [illegible]
8 [illegible] interpretatio, per quam vitatur pœna, & delictum [illegible] laditur.
9 [illegible] quando poteſt trahi ad bonum, & ad malum, in dubio debet trahi ad bonum.
10 Delictum commiſſum in die feſto, cum probatur commiſſum in nocte, [illegible] quia datur dies vt fugiatur maior pœna.
11 [illegible] domum [illegible] mutare, & alio conferre per diem & noctem.
12 [illegible] extra domum hæredis mariti.
13 [illegible] per famam probatur.
14 [illegible] mulier impudica cum aliquo viuit, an ceſſat mala fama [illegible]
15 [illegible] communiter accidentibus.
16 [illegible]
17 [illegible] reſſabit [illegible]
18 Ex cauſa adulterij [illegible] libellum [illegible]
19 Sola pernoctatio non ſufficit ad probationem adulterij.
20 [illegible] nuda ſufficiant ad plenam probationem adulterij in cauſa criminali.
21 [illegible] in camera diſſectorata, etiam quod mulier [illegible] clauſam [illegible] quod interim impleuit opus venereum.
22 [illegible] in fauorem mulieris, quia potior eſt cauſa [illegible]
23 [illegible] habet laudem quam cum condemnat.
24 Suſpicio adulterij oritur, [illegible] & famam [illegible]
25 [illegible] crimen, [illegible] adulterij, quia leuius punitur.
26 [illegible]
27 [illegible] quam mulier [illegible]
28 [illegible] & adulterium.
29 Argumentum [illegible] non valet de iure. [illegible]
30 Cum [illegible] non [illegible] ſideratur ſicut proximæ.
31 [illegible]
32 [illegible]
33 In [illegible] non debet extendi ad [illegible]
34 Voluntas & propoſitum [illegible]
35 [illegible] peccandi quam [illegible]
36 Adulter non [illegible]
[illegible]

[illegible]
41 [illegible] pr [illegible]
42 In [illegible] ſit [illegible]
43 A [illegible] officium clam [illegible]
44 [illegible] habet [illegible] teſtatorem contra arbitrem
[illegible] am.

CONSILIVM CCV.

Pro nobi[illegible] o Ramot, ciue Taurini.

1 D[illegible] ob[illegible] o ex ordine [illegible] ſtulato. Pernoct[illegible]
[illegible] o [illegible] t tune [illegible] *l. ſi cum conſtit § [illegible]*
d [illegible] migrauerat det [illegible] ibus. vbi [illegible] egat Angel *in auth. [illegible]*
§ [illegible] [illegible] m[illegible] et cedens pernoctauit extra [illegible]
te[illegible] ab heredibus mariti qu[illegible] non [illegible]
[illegible] tabat, ad aliud dom[illegible] migrater vb[illegible] præſen-
tiam agit prout ipſius par[illegible] ſtes loquuntur, neque cogi-
2 tur [illegible] ſua morari cum heredibus mariti, cum debeantur ali-
menta ex diſpoſitione [illegible], [illegible] eſt, teſtamento mariti, quo
caſu [illegible] poſſunt alimenta extra domum. Bart. *in l. 4. § [illegible]*
fin. de alim. & cib. leg. Bald. *in l. [illegible] Cod. de leg.* Ange *in*
l. cum [illegible] § [illegible] [illegible] *in conſil. 52* [illegible]
in conſilio [illegible] *in prim. lec. 54.* [illegible] *l. 92.*
column. 4. verſic. [illegible] obſtat petitionis [illegible] quicquid aliter, &
male dixerit Al[illegible] *l. 178* [illegible] vbi Al[illegible] alleg.
Bald. [illegible] B[illegible] contrarium, ſi-
militer alleg. [illegible] vbi Bald. non lo-
quitur [illegible] habitationis, quo
[illegible] habitation [illegible] non in a-
liena, patet, [illegible] nul
[illegible] domino [illegible]
bonis domini [illegible], & [illegible] quando [illegible]
[illegible] d. Senis
3 *in conſil. 23 [illegible]* § [illegible] pernoctis [illegible]
nimo recedendi, probatur quia [illegible] induxit [illegible] bona mo-
bilia ſuper curum, quæ res [illegible] non [illegible]
uertend ad heredes mariti: [illegible] voluntas expl[illegible] *l.*
4 *Pau. reſpon.* [illegible] *verbis. ff. rem [illegible] cum [illegible]* Rurſus
cum poſtea reuerſa non [illegible], præſum[illegible] quod animum reuer-
tendi non haberet. *§ [illegible] inſtit. de rerum diuiſio* ex poſtea enim
geſtis declaratur qualis fuerit voluntas præ[illegible] dens. [illegible] *bel-*
lum 34. qu. 2. perment. 18. di[illegible] a multis. 44. diſtin. gloſſ. in c. ſcribam.
de præſumpt. facit illud vulgatum, quod ex actis acta probat. *l. iam*
tamen § in hac. el 2. ff. [illegible] *l. non intelligitur. § quando autem. ff. de*
[illegible] *l. [illegible] Cod. d.* [illegible] *§ euentus. ff. de pœ-*
nis & in conſtit. ff. [illegible] § [illegible] d hæc [illegible] animo luxuriandi, vt
veneris ludos ageret, vtique pernoctation[illegible] ceſſet nihil in-
telligente mariti herede, quem [illegible] eius [illegible]
ita ceſſare debet omnis ſiniſtra ſuſpicio. *arg. l. non exiſtimo. ff. de ad-*
miniſtr. tut. l. fin. ff. de ritu nupt. Cyn. & Bald. *in l. nemo clericus. Cod. de*
ſum. Trinit. & Fide cathol. Paul. de Caſtr. *in conſil. 178. colum. 2 ad fin.*
5 *lib. 1.* facit quod dicitur † argui ſuſpicionem ex his quæ fiunt
clam *l. 1. Cod. de interdi. [illegible]* B[illegible] *in l. Barbarius. column.* [illegible] *ff. de of-*
ficio prætoris. Rom. *in conſil. 406* [illegible] ceſſat ſuſpicio [illegible] a-
liquid fit palam, vt [illegible] *de*
his qui ſunt ſui vel alieni iur. in [illegible] § Item ſicut dicitur clam fieri,
quod fit ignorante eo cui denunciatum oportebat. *l. 4. § fin. ff.*
quod vi aut clam Bartol. *[illegible] de his quæ ex publ. ratio. lib.* [illegible] ita pa-
lam dicetur factum quod fit ſciente eo ad quem pertinebat, vt
idem operetur propoſitum in propoſito quod oppoſitum, &c
l. fin. ff. de leg. 3. & l. ſi contra. ff. de vulgar. Plane ſi cogitaſſet [illegible]
contrahere, nõ de curru ſeciſſet, non ſciente mariti he[illegible] do-
mum. § Pro hoc quo dicitur conſtare animum occiden[illegible] ex
genere armorum, quando percuſſit quis haſta, cum [illegible] poſ-
ſet percutere, *l. 4. diuus. vbi gloſſ. in verbis [illegible] ff. de [illegible]*
[illegible] 2. in fin. de homicid. idem ſi quis percut[illegible]
dis. *l. eum qui.* vbi Baldus. *Cod. de [illegible]* idem [illegible] percutiat quis [illegible]
Bartol. *in conſil. 104.* [illegible] idem [illegible] quis pug[illegible]
[illegible] Aret. *in conſil. 148.* [illegible] *in fin. ver.* [illegible]
6 nio ad ſecundum † eodem modo dican[illegible] ſtare animi [illegible]
ſtuprandi ex modo recedendi, etenim nõ de curru abeunt do-
meſticis ſilentibus, quæ ſtupri [illegible] § Amplius dicunt
teſtes partis eam præ[illegible] ancillæ [illegible] apud eum quo
cum in præſentiarum agit, cum quo [illegible] ancilla conuenit,
7 ergo † factum ſecutum declarat qualis fuerit animus quando
[illegible] *l. [illegible] ff. pro ſuo. l. [illegible] C.* [illegible] & ex euentu

[illegible] *concubina. § 1.* [illegible] *ff. rerum amotarum.*
§ [illegible] dubia præſumendum eſt quod receſſerit ob
[illegible] poſtea [illegible] eſt, [illegible] ancillam ageret [illegible]
[illegible] vt flagitium aliquod ad [illegible]
[illegible] *ff. pro[illegible]* etenim [illegible] dubia habenda eſt io- 8
[illegible] pœna & [illegible] excluditur [illegible]
[illegible] quam pru not. commendat [illegible]
[illegible] aggrauare poſſem, ſed pru-
[illegible] § [illegible] receſſerit, nempe id
[illegible] commodo bubulci, vt ne
[illegible] quia ad proximum diem alio erat
[illegible] quia [illegible] lebat mulier eius ſuppellectilem ma-
[illegible] *arg. l. 1. C. quando & quib. quar.*
pars [illegible] & [illegible] bonum & [illegible] in du- 9
bio debet [illegible] bonum. Bal. *in l. 1 col. 4. verſic. & not. C. de*
ſer. fug. Al[illegible] *in conſ. 128* [illegible] *4.* & quod [illegible] idem A-
le[illegible] poſt B[illegible] *non ſolum* [illegible] *ff. de ope. nou. nun.* quod vbi
aliquid poteſt eſſe prohibi[illegible] aliquo tempore & aliquo per-
miſſum [illegible] pote [illegible] exclu-
datur del[illegible] idem Al[illegible] *in conſ.* [illegible]
colum. 2. in prin. verſ. 4. [illegible] *lib. 8.* [illegible] quod [illegible]
det de Senis *in conſil. 216.* [illegible] *eſt ſtatuto cauetur colum.* [illegible]
actus † [illegible] delictum commiſ[illegible] teſto, & prob[illegible] 10
commiſſum delictum in nocte illius feſti, præſumitur [illegible]
ſum in hora noctis quæ [illegible] fugi[illegible]
ior pœna. § Nam cum ſumus in permiſſi[illegible] quia pot[illegible] 11
domicilium mutare & [illegible], & [illegible]
præſumendum eſt ob iuſtam cauſam ita eſſe factum, quia in
permiſſi[illegible] præſumptio mala. *l. iniuriarum. § [illegible] ff. [illegible] 3. §.*
his tam. [illegible] *hom.* [illegible] *videtur ff. de reo nou.* Et ad
hunc [illegible] habenda eſt interpretatio, etiam
quo interpretatio [illegible] videatur [illegible] *l. maxime ff. de pa[illegible]*
l. [illegible] in teſtamento ff. [illegible] § *plane* [illegible] Socin. &
idem Soci *in conſil. 13 column.* [illegible] § Secundo prin-
cipaliter [illegible] : lex loquitur de ea quæ pernoctat foris ſi-
ne cauſa [illegible] in d. l. contenta, & ſic præſupponit lex quod
mulier intus agat in domo [illegible], nam foris & intus ſunt cor-
relatiua, ſed iſta mulier quæ alio tranſmeabat, † non poteſt dici 12
pernoctaſſe extra domum heredis mariti, quia iam alibi erat
deſtinatum domicilium, & potius dicitur exacta nox in loco
mutati domicilii, & intus fuiſſe in eo loco. *c. præſenti. § fin. de præ-*
ben. lib. 6. quem text ad hoc propoſitum dicit not. Alexan. *in con-*
ſilio 139 column. 2. in fin. lib. [illegible] facit tex *in l. cætera. § ſed ſi par. ateru. ff. de l. 1.*
quæ ſimul quæ lal. congerit *in l. huiuſmodi. § legatum in 3. not ff. eod. tit.*
Socin. *in conſil. 33 colum. 4 lib. 1.* ergo cum ceſſet præſuppoſitum le-
gis, quia mulier amplius non agebat in loco mariti, ceſſat diſpo-
ſitio *gloſſ. in l. [illegible] C. de ſer. fug.* vbi [illegible] Bar. Sal. & Fulg. quod di-
ctum pro [illegible] Rom. *ſing. 86. statutum puniens.* Etenim
quo modo contendemus mulierem pernoctaſſe extra domum
mariti quæ in ea domo minime agebat. Similiter dici non po-
teſt pernoctaſſe mulierem extra domũ [illegible] domicilii, nam
cum ad eam accedere & migrare deliberatum habuiſſet, apud
eam fuiſſe cenſetur virtute deſtinationis per ſupradicta. Et pro-
fecto nimis quam abſurdum fieret mulierem ſtupri poſtulari
quod per noctis tempus alio mutet domicilium, qu[illegible]
ctum ſit mulieribus mutare domicilium per noctis tempus.
§ Tertio principaliter arguit ex veriſimilitudine: nam iſta mu-
lier poſt receſſum ab herede mariti con[illegible] in loco mu-
tati domicilii, & ibi [illegible] in præſentiarum agit. profecto † ta- 13
lem per [illegible] prob[illegible] ſtuprum ſi impudice viueret,
quæ veriſimilitudo fortiter mouet iudicum mentes. [illegible] *quia ve-*
riſimile. vbi A[illegible] *de præſ. [illegible] non eſt veriſimile. ff. quod metus cauſa.*
nam a communiter accidentibus, quando † aliqua mulier ſtat 14
cum alio, vt eius amica, & impudice cum eo viuit, rumor & fa-
ma per locum diuagatur & diffunditur, de quo rumore & fa-
ma, quia nihil apparet, ceſſare debet mala ſuſpicio vt contrario-
rum eadem [illegible] diſciplina *l. [illegible] ff. de his qui ſunt ſui vel alieni iur.* Bar. *in l.*
inter ſtipulantem. [illegible] *ff. de verb. oblig.* † Et præſumptio efficax 15
ſumitur a communiter accidentibus [illegible] *Cod. de arbu. l. certa*
conditio. § ſi nominum ff. ſi cert. pet. [illegible] C. de probatio. not.
Moder [illegible] *in præſentia. de probatio.* § Quarto arguit ſic: text. *in*
d. l. conſenſu. Cod. de repud. [illegible] verbo pernoctare, quod ſignifi- 16
cat perfectionem, quando quis foris vigilat totam noctem *l. ve-*
bana familia. § pernoctare ff. de verb. ſignif. ſed iſta mulier non vigila-
uit foris totam noctem ex quo alio tranſmigrauit, nec vnquam
reuer-

[illegible] & sic [illegible] sequitur de [illegible] ex pernoct. [illegible] dici [illegible] quando nul[illegible] *ad leg. Iul. de adult. [illegible] ¶ Quinto dic [illegible] ex pernoctatione probetur stuprum seu
adulterium [illegible] quo ex ea causa potest maritus mittere [illegible] repudium, sed non sequitur, ergo ex pernoctatione [illegible] adulterium, nam posset pernoctare vxor cum alius [illegible] tibus solum, aut etiam cum viris, & tamen matrimonii fidem non lædere. probatur hoc, quia in illa l. narrantur multæ causæ repudii quæ non respiciunt adulterium, ideo non sequitur permittitur repudium ex causa pernoctationum, ergo [illegible] ex præsumitur adulterium, licet suspicio esse posset. *l. non hic* [illegible] ¶ Et profecto si sola pernoctatio sufficeret ad probandum adulterium, verisimiliter de ea text. mentionem fecisset [illegible] *de test.* [illegible] vbi datur modus probandi adulterium, [illegible] ultra, quod sufficit vna præsumptio, sed plures vrgentes requiruntur. ¶ Sexto adduco quod scribit Matthæus [illegible] 19.
30 vbi quod visio solius cum sola, nudi cum nuda, quæ sufficit ad [illegible] matrimonii. *c. literis de præsumpt.* non tamen sufficit [illegible] probationem adulterii in causa cum sequitur Corn. [illegible] 192 [illegible] *in lib.* 4. ¶ Sed fortius voluit Rotel[illegible] *inter consilia Bald.* [illegible] *consilio* 445. *Super prædicto. lib.* 1. quod non probatur
[illegible] ex [illegible] † quod iuuenis fuerit inuentus in camera di[illegible] etiam quod mulier teneret ta[illegible] m, & negaret [illegible] ibi esse, quia non sequitur, [illegible] enim opus venereus impleuit cum potuerit sic agere [illegible] & tamen non adulterauerit: & sic potius videtur [illegible] conatus quidam quã consummatio delicti, quod [illegible] procedere quoties agitur de adulterio criminaliter. ¶ Si [illegible] non sufficiunt ad probationem adulterii, quanto minus [illegible] sola pernoctatio. ¶ Septimo heres mariti [illegible] dotem, mulier autem damnum vt
32 fugiat, ide[illegible] pronunciandum est in fauorem mu[illegible] damni quam lucri. *l. Proculus ff. de damn.* [illegible] *Cod. de mor. debit. l. fin. Cod. de* [illegible] mittenda est benignior interpretatio [illegible] dote [illegible] *l.* 2. *§. item Varus. ff. de aqua plu. arcen.* facit Baldus
33 *in consilio* 183. *Statuto cauetur* [illegible] *lib.* 1. idem [illegible] dicimus † in maiorem [illegible] iudici absoluenti accedere quam condemnanti. Paulus de Castro *in consilio.* 199 *Visa inquisitione. in fin.* [illegible] Et facit verbum domini, mulier quis te condemnauit, &c. ¶ Octauo in fauorem mulieris adduco Baldus *in consilio* 427. *Quædam mulier. lib.* [illegible] *quod reperitur inter consilia Rom. consil.* 451. vbi quod suspicio
34 ad[illegible] magna oritur quando simul inueniuntur masculus & femina noctis tempore in locis abditis, ergo a contrario sensu [illegible] suspicio quando non in locis abditis, & quando non masculus suspectus inuenitur, sed bubulcus boues agens per loca publica. ¶ Nono, posito tune veri præiudicio, probatum esse stuprum, non tamẽ sequitur, ergo vidua dotes amisit: [illegible] opinione [illegible] quod vidua dotes non amittat propter stuprum [illegible]

[illegible]

& [illegible] opinio [illegible] & ea [illegible] dote non esse [illegible] bet [illegible] Doctor. [illegible] opinio [illegible] Cast. quos [illegible] sequitur N[illegible] iudic[illegible] nuptias, Cod. [illegible] *amplect. eam.* [illegible] solum [illegible] datur in [illegible] Castr. videtur posse respondere quod licet adulter[illegible] prum æquiparatur de iure communi, tamen [illegible] non debet extendi vltra terminos suos, [illegible] reperitur, *per glo. in c.* [illegible] *verbo declarationem de elec. vel nomina* [illegible] dicto casu, æquiparantur a lege antiqua, lex nova de [illegible] vno, non cetera disponet in alio, nisi in casibus [illegible] de iure [illegible] quo [illegible] æquip[illegible] Rom. [illegible] *Amplissimo doctor* [illegible] *vol.* 1. *verficul.* [illegible] *ver*[illegible] *ad notab.* & 101 Crot. [illegible] *celum.* 9 [illegible] *C. de trans.* [illegible] respectu amissionis dotium [illegible] æquiparatio [illegible] se facta nec nos æquiparare de[illegible] mos: [illegible] enim [illegible] de amissione in adulterio [illegible] exprimer in stupro [illegible] *cap. inter corporalia. de transl. præelato l. vnica* § [illegible] *ad fiscum. Cod. de cad. toll.* ¶ Secundo considero quod in adulterio constante matrimonio mulier p[illegible] iure quærendo, quia dos dicitur esse mariti. *l. dote ancillam. Cod. de rei vend.* sed eo soluto dos est mulieris. *l. si cum dotem. C. de iure dot.* & sic agitur de perdendo [illegible] iam qu[illegible] arg. non valet de iure quærendo ad quæsitum quo[illegible] emittitur *l. si sponsus. § si maritus ad* [illegible] *donat. inter vir. & vxor.* [illegible] *Cod. de pact.* vbi not. [illegible] *in cap. tua. de his quæ fiunt a prelat.* [illegible] ¶ Præterea vt dic[illegible] & [illegible] Crot. *in d. § Cato.* stuprum [illegible] crimen quam [illegible] adulterium, ergo de vno ad alterum [illegible] ne infertur. ¶ Qua[illegible] maior dolor quem maritus [illegible] de [illegible] quam heredum, propter stuprum, qu[illegible] ad sensum & rationem naturalem, nam dolor mariti intrinsecus, com[illegible] vna caro [illegible] *ex debitum. de* [illegible] *demus. de donat.* dolor autem heredum est magis a remoto [illegible] quandoque sunt heredes extranei ad quos stupri dedecus nihil pertinet. & quia turbatur mariti animus ob incertitudine prolis, itaq. votum [illegible] maritum de adulterio vxor [illegible] lucro ex parte placare, *ar*[illegible] *l. cum quis in prin.* [illegible] quæratio [illegible] non tanta militat. ¶ Et cum herede [illegible] proxim[illegible] offendantur sicut [illegible] po[illegible] tum in matrimonio non debet extendi ad hered[illegible] quia [illegible] guere de causa proxima ad [illegible] remotam, quia non licet causa [illegible] efficax est sicut proxima. *l. si cum qui* [illegible] *si mulier ff.* [illegible] *quæ gloss. addu. in cap. de castro de bocc.* & in iniuria heredum non tanta, quanta illa quæ mari[illegible] infertur, esse iniquum quod æqu[illegible] pœna, quia in ma[illegible] iniuriarum [illegible] præ[illegible] iudicis [illegible]

[illegible]

[illegible] & [illegible] bum. ſed in ſtupro vi[illegible] etiam ob ſui primi [illegible] tes amo[illegible] ondiſſet quod non, quia eſt tant[illegible] heredibus mari, quanta eſt in mariti [illegible] dolor ob adulterium vxoris acerbior [illegible] & [illegible] grauior ſit que non ſequitur, parificantur adulterium & ſtuprum reſpectu pœnæ ad fiſcum pertinentis, ergo debent parificari etiam reſp[illegible] heredum. Neque obſtat qu[illegible] in ſtupro videatur etiam cõ[illegible] iniuria mariti defuncti, cuius anima ſi ob ſecundas nuptias contriſtatur, [illegible] pro [illegible] ſtupro. §. nos igitur. in auth. de nupt. quia illud eſt per viam fictionis & præſumptionis, quia defuncto proprie iniuria fieri non poteſt, cum mors omnia ſoluat. §. deinceps in authent. de nupt. ideo gloſſ. in d. §. nos igitur. in verſ. & defuncti. dicit quod iniuriam facere videtur ſentiens, quod proprie fieri non poteſt, ſimiliter text. in l. at ſi quis index. ff. de relig. & ſumpt. fun. loquitur de iniuria defuncti, vtitur verbo videatur. cum contumeliam defuncto feciſſe videatur. ¶ Ideo text. in l. §. & ſi forte cadauer. ff. de iniur. vult quod

32 pro † iniuria illata cadaueri heres agat proprio nomine, profecto ſi defuncto proprie iniuria fieret, non proprio nomine ageret heres iniuriarum, ſed nomine hereditario & tanquam heres, ſed quia iniuria commiſſa in defunctum ad heredem videtur pertinere, heredi datur iudicium iniuriarum nomine. ¶ Et ex his reſpondetur ad vnum ex fundamentis Paul. de Caſtr. in d. conſ. vbi conſiderat iniuriam fieri marito ex ſtupro vxoris, quia illud fit per fictionem legis non vere & proprie, ſed vbi ſumus

33 in pœnalibus diſpoſitio loquens in caſu vero, non debet extendi ad caſum fictum. l. 1. §. hæc verba ff. de neg. geſt. Bald. in l. 1. §. 1. ff. de fun. Bald. in conſ. 94 ad euidentiam præmitto. ſum quod maleficium. colum. 1. lib. 1. Corn. in conſ. 192. col. 1. lib. 3. vbi alleg. Bart. in l. quemadmodum C. de agric. & cenſ. libr. 11 Iaſ. in l. Gallus. §. quid ſi is col. 3. in 3. not. ff. de lib. & poſthum. ¶ Denique quando mulier committit ſtuprum mortuo marito, non ita cogitat maritum offendere ſicut ſi viueret, conſequenter etiam reſpectu ipſius mulieris iniuſta vide-

34 tur minor aduerſus maritum, quia † voluntas & propoſitum diſtinguunt maleficia. l. 1. §. diuus. ff. ad l. Corn. de ſic. l. ſi non conuicii. C.

35 de iniur. cum ſimil. ¶ Præterea quando † maritus viuit, minor videtur in vxore occaſio peccandi, quam eo mortuo cum difficile ſit [illegible] iniuriam ſuſtinere. Ideo quando vxor committit adulterium, quia maritus debitum coniugale non præſtat, excuſatur vxor à pœna adulterii. c. ſi tu abſtines. 37. qu. 2. not. Boer. in d. conſ. Burde. quæſt. 197. col. 6. & amoris feruore nihil ſit vehementius §. illud quoque. in auth. quib. mod. nat. effic. ſui. gloſſ. in l. vnica. in verſic. capta C. de Senatuſc. Claud. toll. & in §. 1. verſ. baccata inſtit. de ſucceſſ. ſublat. vbi gloſſ. citat verſus, militat in teneris huius amor hoſpes amnius, eſt in canicie ridiculoſa venus, & dicit text. in l. 2. §. initium. ff. de origin. iur. quod captus amore virginis omne phas atque nephas committeret, & Bald. ibi dicit quod amor puellarum ſenſum peruertit. Salomon enim propter mulieres idola adorauit, & templum eis ædificauit. 3. Reg. 13. & c. Salomon. 31. quæſt. 1. & Salomon ipſe dicit, quod vinum & mulieres faciunt apoſtatare ſapientes. Alibi not. Ariſtot. 7. Ethic. 3. Iram & cupiditates venereas externo [illegible] ſimilia corpus etiam manifeſte permutaſſe atque nonnullos in furorem ac in inſaniam adegiſſe. Imo videtur amor [illegible] ita inſtar [illegible] btinere, ad minora non cogens atque quæſt. quod ipſum videmus ipſo rerum experimento. An non & corpora & bona in diſcrimine veniunt amoris nomine? qui ſane amoris furor in matrimonio c[illegible] ſtatte facilius reſtringi poteſt: ob id ſi adulterium co[illegible] illud videtur delictum grauius ſtupro, à quo mag[illegible] excuſire difficultas intemperantiæ. argum. not. in l. quidam. ff. [illegible] ¶ Non obſtat aliud fundamentum Paul. de Caſtr. in d. conſ. 47. quod adulterium commiſſum in matrimo-

36 nio putatiuo † punitur ſicut commiſſum in matrimonio vero: ergo idem videtur dicendũ in matrimonio ficto, quod conſideratur in viduitate, quia parcat mihi reuerentia Paul. iſta argumentatio videtur non bona ob rationis diuerſitatem maximam, nam adulterium commiſſum in matrimonio putatiuo ideo punitur eodem modo, quia alias ſequeretur inconueniens & abſurdum [illegible] melior eſſet conditio contrahentium matrimonium pro[illegible] & minus legitimum, quam verum & legitimum [illegible] ad Senatuſc. ff. quod vi aut clam. & exemplum quod tradit Pa[illegible] minus legitimo seu putatiuo, ſicut po-

37 tius con[illegible], quia im[illegible] tandum eſt tutori minus legitimo cur tu[illegible] legitime [illegible] ſi ſeuniter adminiſtrauerit, & eſſet plusquam abſurdum quod pl[illegible] tribueretur tutori putati-

u[illegible] quam vero, quia etiam quod quis nullo modo ſit tutor, nec vere nec putatiue, tamen † ſi adminiſtrat bona alterius, te- 38
netur pro adminiſtratis, vt patet tit. ff. & C. de negot. geſt. ſed iſta ratio ceſſat quando committitur ſtuprum per viduam, quia tunc nullum eſt matrimonium verum nec putatiuum, & licet fingatur matrimonium reſpectu priuilegii conceſſi viduæ, tamen † vbi 39
ſumus in pœnalibus diſpoſitio loquens in caſu vero, non debet trahi ad caſum fictum vt ſupra dixi. ¶ Præterea retorqueri poteſt fundamentum Paul. de Caſtr. contra eum, tenendo opin. quod propter adulterium in matrimonio putatiuo, mulier dotem non perdat: quam opin. tenet Bald. Nou. in tractatu de dote. parte 11. ar. 64. verſic. 13. differentia Bertachin. in 1. parte ſui repertor. in verbo, adulterii. verſ. 41. in 2. parte repert. in verbo, maritus adultera. verſ. 5. in verbo, vxor adultera. verſ. . Alexand. in l. ſi cum dotem. §. fin. colum. 2. ff. ſolut. matrimon. ſequendo gloſſ. iuris ciuilis in l. conſenſu C. de repud. contra gloſſ. iuris canonic. in cap. plerunque, de dote. poſt di. reſtit. licet iſtud ad præſens determinare non expectat, & data ſcientia contrahentis matrimonium prohibitum, vel vt videtur gl. iuris canonici, ne melior ſit conditio contrahentis matrimonium prohibitum, quàm legitimum, quo caſu quando delinquunt, melior eſſet conditio quam non delinquentis, ſufficit aliquid de facto fieri, & pœna quæ imponitur in actu valido, habet etiam locum in actu nullo, qui fit de facto, vt per Dec. in cap. ex tenore col. 3. poſt med. de reſcript. tradit Rip. l. 1. colum. 4. circa fin. ff. de vulg. per text. in l. cum quidam. C. de adult. ex qua declaratione reſoluuntur multa Doct. dicta quæ varie, confuſe & in contrarium adducuntur, maxime per Iaſ. in l. vbi pactum. col. penult. C. de tranſact. vbi more ſuo allegat pro & contra, nec aliter explicat, ſed relinquit cogitandum.
¶ Non obſtat quod ſicut † vidua gaudet priuilegiis prioris 40
matrimonii, ita debet ſentire incommodum pœnæ amiſſionis dotis ob ſtuprum, quo argumento vtitur Paul. de Caſtr. in d. conſil. quia reſpondeo, quod facilius inclinatur lex, vt alii proſit quam vt noceat: nam lex induxit quod factum coniuncti poteſt coniuncto prodeſſe nõ nocere: ſimiliter probationes † per 41
alium factæ poſſunt reo inquiſito prodeſſe, ſed non nocere, vt tradit idem Paul. de Caſtr. in conſ. 168. ſup. 1. dubio dicendum eſt, quod cum diuerſitas col. 2. circa fin. lib. 1. facit tex. in l. fin. Cod. de cod. quod non eſt par ratio lucri & damni. facit etiam quod ſcribit idem Paul. de Caſtro in conſil. 412. viſis punctis ſeu caſibus col. 2. lib. 1. vbi quod ſententia lata in fauorem abſentis valet, quæ non valeret ſi contra ipſum abſentem, & non citatum lata eſſet, per textum in l. quamuis indubitati. in fin. C. de adult. facit etiam text. in l. non ideo minus. C. de procurat. Ideo non ſequitur, lex voluit fauere viduæ quod gaudeat priuilegiis prioris matrimonii, ergo voluit & nocere, quod ſi ſtuprũ committit, dotes amittat, & ſecundum conſiderationem Paul. inducta in fauorem mulieris viduæ, retorquerentur contra eam in eius odium. contra l. quod fauore. C. de ll. nec iſto caſu procedit regula quod contrariorum eadem debet eſſe diſciplina, per diuerſitatem rationis, quæ eſt inter fauorem & odium Bart. in l. inter ſtipulantem. §. ſacram colum. 4. ff. de verb. obligat. Iaſ. l. 1. & ſi contra. columna 1. ff. de vulgar. & quod pulchre ſcribit idem Paul. de Caſtr. conſil. 307. videtur quod non retineant. colum. 2. libr. . vbi ſi alicui conceditur exemptio à muneribus, non tamẽ amittit priuilegia ciuitatis, quibus antea vtebatur, quia licet non ſentiat onera, poteſt ſentire tamen commoda, cum iſta inter ſe ſint ſeparata, dicit Paul. ſed ex ſeparatis non infertur: ergo male arguitur, vidua gaudet priuilegiis matrimonii: ergo ſentire debet & onus pœnæ, & ſic ex doctrina & verbis eiuſdem Paul. tollitur hoc ſuum argumentum, nec ſequitur, aliqua æquiparantur reſpectu fauoris, ſcilicet matrimonium verum & matrimonium fictum in viduitate: ergo, &c. reſpectu pœnæ. Socin. in conſ. 150. colum. 2. i. al. fin. verſ. bene facit quod ſingulariter. lib. 1. alleg. alleg. Iac. de Are. Petr. & Cyn. in l. non ſine. C. de bon. quæ lib. ¶ Addo Ioann. de Anan. in conſ. 26. col. 1. tradit Iaſ. in l. Marcellus. in princ. col. 7. verſ. ſecundum principale. ff. ad Trebellian. Iſtud tamen aſſeuerare non auſim, quia etiam in materia pœnali videtur fieri extenſio ad alterum caſum æquiparatum. gloſſ. Bart. & Doctor. in leg. ſi quis ſeruo perſuaſerit per illum text. C. de furt. iuncta l. non tantum ff. de ſeru. cor. Iaſ. tibi contra. in [illegible] ſi arrogator. colum. antepenult. verſ. ſed redeundo ad principal. in [illegible] ad- [illegible] in l. 1. col. 5. & col. 6. ff. de leg. 1. in auth. quas act. col. 5. [illegible] opin. Pla. & colum. 7. verſ. 2. principaliter limita. C. de ſacroſ. eccleſ. in l. tranſige. colum. 3. verſ. 2. mouetur. C. de tranſact. in 6. ex maleficii col. [illegible] 39 l. ſi . de act. Dec. in cap. cauſam quæ col. 3. verſ. ſed reſpondetur. de iud. Ideo aliter reſpondeo, quod † in æquiparatis non fit extenſio niſi [illegible] æqui- 42
paratio ſit ſimplex aut vniuerſalis quo ad omnia. Mathæ. in

tra .

[illegible] poteſtatem [illegible] contra [illegible] em ceſſum, non [illegible] volut Rota de- [illegible] vbi quod clericus non dicitur perſona po- [illegible] habeatur [illegible] nem contra eum, cõtra quem fit, [illegible] dum eſt in An. Ranotiæ conon habente [illegible] eccleſiæ. ¶ Dubitatem tamen de dicto Rotæ & Rom. [illegible] eccleſia aut Clericus non dicatur potentior ratione [illegible] aut poteſtati, dicitur tamen potentior ratione [illegible] conueniendi. [illegible] An. h. in conſ. 65 quæſtio talis erit. [illegible] tiam difficultatis conueniendi in hac ma- [illegible] idem. Anch. in conſ. [illegible] verſ. præterea conditio. [illegible] tur de potentioribus perſonis, quia eſt dif- [illegible] & quod eccleſia dicatur de perſonis poten- [illegible] Cæſar. in conſ. [illegible] col. 4. ſed non expedit hic diſpu- [illegible] eccleſia, quia ſumus in laico. ¶ Per conſequentiam non [illegible] condemnari ad reſtitutionem dotium, [illegible] debiliteranonthus aduocati partis quæ- [illegible] & allegant, quæ animis & facta ratione abhor- [illegible] bendum putaui ſub ſaniore conſil. [illegible] Aymo Crauetta ex Sauiliano. I. V. D.

SVMMARIA.

[illegible]

Immemore ſunt ſoluta æterna, ſiue decimæ veterum

Ad [illegible] andum ſufficientem peccati, præſumetur vxorem que fuiſſe de bonis mariti

Partes poſſunt conuenire quod ſtetur probationi imperfectæ.

CONSILIVM CCVI.

Pro magnificis dominis Vicinoni contra nobiles de Caburrato

DIvi[illegible] ſubſidio ex corde poſtulato. In propoſito caſu puto ſententiam [illegible] tam in gratiam rectoris Eccleſiæ Vicinoni per d[illegible] todeſſe etiam magnifici domini Vicinoni [illegible] nuante Concilium [illegible] teranenſe. Et pro [illegible] nto præmitto regulam [illegible] quod te[illegible] inte [illegible] ſup[illegible] od [illegible] quam [illegible] ocet. [illegible] heres. ff. famil. erciſcund. [illegible] adult [illegible] volunt [illegible] lib. [illegible] ed ind. [illegible]

[illegible] valet [illegible] lata pro [illegible] Caſtr. in conſ. 219. pro de [illegible] ad nocendum [illegible] videtur dicendum [illegible] deſſe magnificis dom. Vi[illegible] fauore [illegible] directi dominium [illegible] habentibus dominium vtile, maxime [illegible] ipſo directo domino, quia [illegible] videtur [illegible] batur ex his quæ ſcribit Alex. [illegible] prænducet. not. etiam Dec. Neapo. [illegible] ſententia lata contra dominum directum [illegible] fortiori quando fertur in fauorem [illegible] plusquam abſurdum, quod [illegible] ſententia [illegible] ctorem Eccleſiæ, nocuiſſet dominis Vi[illegible] ſam ab eccleſia, & quod lata ſententiam [illegible] dominus non proſit: nam contrariorum eadem [illegible] na. Inſtit. de his qui ſunt ſui vel alien. iur. in princip. [illegible] ſed [illegible] niſſent. vbi Bald. [illegible] maxime, quia maior ratio eſt prodeſſe debeat quam nocere, vt ſupra dixi. ¶ Secun[illegible] probari videtur à fortiori, nam [illegible] authoris, prod. ſt ſingulari ſucceſſori habenti ab e[illegible] ad acquiſitionem de nouo. l. pro inde ff. ſi cert. pet. [illegible] Bart. ff. de pign. act. [illegible] ergo ta[illegible] fac[illegible] tius quam de nouo acquiratur. [illegible] extraneos, licet per eos denuo acquiri non poſſit [illegible] cauſam ab Eccleſia, & Eccleſia ſententiam obtinuit, ſeu alius nomine Eccleſiæ, de facili talis ſententia operari [illegible] tem dominorum quo ad conſeruationem [illegible] quæſtione videtur text. in l. ſi quis ſeparatim. [illegible] ſententia [illegible] lata pro vno conſort. prodeſt omnibus [illegible] ſit cauſa defenſionis omnium. ſimiliter ſententia [illegible] fratre, prodeſt alteri fratri [illegible] quod Angel. dictum ſequitur [illegible] ſimiliter ſententia [illegible] ta pro vno correo debendi [illegible] eſt. Bart. in l. [illegible] ff. de duob. reis. Soc. in conſ. 283. col. pen. lib. 1. ¶ Quarto [illegible] realis [illegible] quæ fiunt pro præ[illegible] realis, quia ſecundum [illegible] debebentur, non [illegible] eccleſiæ, non perſonæ, quia [illegible] [illegible] conſtat quod mortuo [illegible] lato ſeu rectore, debebantur o- [illegible] in beneficio [illegible] Eccle[illegible] cederet [illegible] ergo non [illegible] reale [illegible] ſententia [illegible] prædio. [illegible] [illegible]

indiuidua, & licet plures in [illegible] commoditate d[illegible] imarum [illegible]
pentes dne [illegible] hec atten[illegible] ie tunc adendae [illegible] ipſi [illegible] p[illegible]
cipali [illegible] *qui non can. ant. com.* [illegible] *alieno ff. ſi cert. pet.* [illegible] mos
10 in [illegible] iure hypothecæ, quod indiuiſuum dic[illegible] u[illegible] licet ipſæ res
hypothecatæ ſint diuiſæ. *quam lin. Cod. de d[illegible]* S[illegible] icin *in
conſil.* 82. *col. fin. lib.* decaſio Neap *deciſio.* 213. *col. fin* ¶ Præterea ad-
uerſariorum n[illegible] intereſt de h[illegible] opponere, quia ad eos non
pertinet quærere inter quos & quomodo decimæ inter [illegible]
diuidantur [illegible] præſtent modo quod ten[illegible] ntur præſt[illegible] [illegible] as
Eccleſiæ debitas, & adiudicatas ne qu[illegible] tant q[illegible] ad [illegible] non ſpe-
ctant *arg. l. in priuc. ff. quarum appellatio non recip. l. ille à quo. §. [illegible] amen-
to.* vbi Alexand. *ff. ad Trebell. c. cum inter. 2. d. de elect.* [illegible] *venien. el. 2. de teſtib.*
Imo plus, ſi magnifici domini Vicinoui non poſſint exigere
decimas in caſtro Belli repam, quia perdi[illegible] ſſet ius decimatum
ſeu vtile dominium & illud ad eccleſiam [illegible] d[illegible] nolutũ, nun-
ne eccleſia pleno iure exigeret decimas & in ſolidum, nihil igi-
tur referre videtur ipſorum de Caburteto quib[illegible] decimas ſol-
uant. ¶ Et licet debitur inuitus non cogatur [illegible] ſoluere qu[illegible] m
cui promiſit. *l.* [illegible] *& ne creditorum. C. de nouat.* tamen domini de Cabu-
teto ab tempore immemorato ipſis dominis Vicinoui ſolue-
11 runt, & ſic iam ſe obligarunt ab initio: & † quæ ab initio ſunt
voluntatis, ex poſt facto ſunt neceſſitatis *l.* [illegible] *cut ff. de actio. & obli-
gat.* nec eſt quæſtio de hoc, ſed tantum ad quam quantitatẽ ſol-
uere teneantur. ¶ Rurſus cum ipſi domini Vicinoui ſint inueſti-
ti de feudo decimarum, non poſſunt allegare domini de Cabu-
teto quod non poſſint cogi [illegible] ſoluere decimas alijs quam cui de-
12 beant. † quia [illegible] no debent ſolui decimæ feudatario de illis inve-
ſtito, quo caſu dicuntur ſolui vero domino & creditori, ſicut vi-
demus in debitore ceſſo qui ceſſionario cogitur, quia tunc di-
cuntur ſoluere creditori ſaltem vtiliter. *d. l. nouationi vbi glo. in verb.
ſolet. conſ. alleg.* nam hic ſumus in ceſſione, quia iura vtilia decima-
rum ceſſa ſunt pro parte ipſius dom. Vicinoui inueſtiti. ¶ Sed
alia oritur dubitatio, in qua quantitate ſolui debeant decimæ?
breuiter dicendum videtur quod inſtar aliorum & prout alij
ſoluere tenentur & [illegible] conſueuerunt. nam cum decimæ ſint onera
realia, & debeantur pro prædiis quæ quis poſſidet in aliena pa-
rochia, quia non conſiderato perſona ſeu dominium prædiorum,
ſed ipſa bona, niſi aliud quis obtineat de conſuetudine *c. quo-
niam c. cum contingat l. decimas.* vtiq; debent ſolui [illegible] ſecundum quod
13 in illa parochia ſolui cõſueuerunt. quia † conſuetudo generalis
vnius loci generaliter eſt obſeruanda. *fi Rom. 19. diſt. l. de precio. ff. de
14 Publicia.* ¶ [illegible] ornus, † vbi agitur [illegible] le interpretatione ſeu declara-
tione actus, ſeruari debet conſuetudo vicinorum, nedum eiuſ-
dem loci, ceſſante in loco conſuetudine, puta, probatur quod
aliqui viuant iure Francorum, ſed dubitatur in quib. bonis ita
viuatur, certe ſi aliter de hinc non appareat, inſpici debet con-
ſuetudo vicinorum, qui & ipſi viuunt tali iure ita determinat
dec. ſ. Neap *deciſ.* 248. *col.* 4. Eodem modo cum hic agatur ſolum
de actus declaratione in qua quantitate ſoluendæ ſint decimę,
quia actus ſubſtantia non negatur, ſcil. decimas ſolui debere,
ſtandum erit conſuetudine aliorum de loco decimas ſoluen-
tium. ¶ Ide & magis in terminis videmus q̃ in præſtatione pro-
curationis attenditur conſuetudo vicinorum, vt teneatur quis
ad eũm modũ & ad eam quantitatem in procurationem præſta-
re Epiſcopo viſitandi Eccleſiam prout alij vicini tenentur. *ſuper
eo. d. conſ. 6 vbi eleg̃ concord.* allegat declarat quod aut aliquis locus
habet ſ[illegible] un conſuetudine [illegible] p[illegible] rticularẽ, & tal[illegible] ſeruanda eſt, aut
non, & [illegible] tunc conſuetudinis vicinorum. ¶ Sed nobiles de Cabu-
te[illegible] nol[illegible] [illegible] ebant c[illegible] ſu[illegible] [illegible] em particularẽ minus ſoluen-
d[illegible] [illegible] duant, igitur reg[illegible] anda eſt res ſecundum cõſue-
tudin[illegible] m vniuerſ[illegible] lem [illegible] ſoluentium d[illegible] cimas debitas ec-
cleſiæ parochiali vicinorum *c. cum olim de con. ac.* Anch *in conſ.* 255.
*In cauſa & quæſt. quæ vertitur inter nob. lem virum col pen. ver. ſi vero duo er-
go quod maxime obtinet* quia dici non poteſt q̃ iſta conſuetudo ſit
contra ius commune & odioſa contra ipſos de Caburteto, ex his
quæ ſcribit Aret *in conſilio* [illegible] *in cauſa quæ vertitur inter homines col.* 3.
verſ. non o[illegible] [illegible] venda ratio. nam iſta conſuetudo eſt [illegible] orabilis i-
pſi[illegible] de C[illegible] urteto, & odioſa reſpectu allegantium ipſam conſue-
tudinem: quia vbi de iure communi debentur decimæ illæ ad
d[illegible] [illegible] partem debentur *c. i. d. decimis.* hic petuntur ad minorem
[illegible] quantitatem. ¶ Ex [illegible] t non [illegible] le
probari [illegible] in qualibet p[illegible] [illegible] [illegible] tacite fuerint de-
cimæ, [illegible] s eſt enim prob[illegible] quod in maiori parte ita ſeruetur,
interueniente tacito conſen[illegible] i populi vicinorum, vt no. *in l. de qui-
bus. ff. de leg.* Coru *in conſ.* 319. *col.* 12. *verſ. nam adeſſe conſuet. lib.* 3. & cum

[illegible] dicimas deberi à nobilibus de Caburteto pro prædi[illegible]
Belli repatri, & eas [illegible] ſſe ſolutas, in dubio intelligen[illegible] debet fuiſſe
ſol[illegible] tas ſecundum conſuetudinem in earum ſolutione generali-
ter obſeruatam, quia [illegible] à conſuetis ſumitur præſumptio. *c. ſi de* 15
[illegible] *præcatione ff. de leg.* late Moder. *in l.* [illegible] *ſecundo §. minime* [illegible]
p. ¶ Rurſus quando tractatur de aliquo re reſpectu rei, in- 16
ſpicitur conſuetudo loci, vbi ſita eſt res ſecundum Bar. *in l. cun-
ctos populos colum.* [illegible] *in 4 qu. C. de ſumma Trinit. & fide cath* Bal. *in auth.*
[illegible] *es peregrini* [illegible] *l. 1 C. comm. de ne. l.* [illegible] *ap. §. & quia in 4. q. de
reg. ſignif.* & ſicut dicimus q[illegible] [illegible] co[illegible] [illegible] ſuperiori [illegible] lli-
gitur facta in forma [illegible] mmun in du[illegible] *capitul. quia diuerſitatem.
de conceſſ. preb. no. inc. 1. de confirm. vtili vel inut.* e[illegible] dem ratione p[illegible] n-
inendum eſt decimas [illegible] iſſe ſolutas ſ[illegible] undum quod commu-
niter ab alijs ſolui conſueuerunt, & quod dicimus de probatio-
ne quod ſufficit eam concludere [illegible] apud communitatem ac-
dent *glo. in l. 1. q. mat. des C. de prob. cum* [illegible] *ud.* quæ [illegible] ec. no. *in c. in præ-
ſentia. de prob. col.* 9. Iaſ. *in l. non hoc. C.* [illegible] *vnde leg.* & iſta præſumptio
eſt fauorabilis animabus ipſorum de Caburteto [illegible] uia [illegible]
non probant aliqui in co[illegible] ſuetudine impar[illegible] [illegible] in au[illegible]
le num qu[illegible] [illegible] ngeri ſint ad decimas minores & pauciores
quam alij Ideo [illegible] mus [illegible] ſſe eos minus quam alios argu-
tiu peccatũ & delictum ipſis de Caburteto q[illegible] od [illegible] ao [illegible] uerint
ec[illegible] leſiam decimis quæ præſumptio capi non debet *mentio. ff.
pro* [illegible] nec eſt veriſimile quod † immemores fuerint [illegible] utis æ- 17
ternæ decimas retinendo. *l. fin. C. ad leg. Iul. rep.* ¶ Simile videmus
quod ad † vitandum ſuſpicionem peccati, præſumitur vxorem 18
quæſiuiſſe de bonis mari[illegible] *l. Quintu.* [illegible] *de donat. inter vir. & vxor.* I-
tem præſumitur quis poſſediſſe [illegible] ex titulo probato, ne alias
præſumaretur illic tum quod alienum occupauerit *l. quædam mu-
lier. ff. de rei vend. l. nimium aſtractius. C. de acquir. poſſ.* quæ præſumptio
maxime placere debet in ipſis de Caburteto viris nobil[illegible] quo-
rum nobilitas non patitur vt deterius quicquam in eos ſuſpice-
mur *ex text. no. in c. in* [illegible] *eſſent. de prob.* & quod no. *Innoc. in c.* [illegible] *de eccl. pe-
reg.* & quæ nobilib. Iaſ. ſcri. [illegible] *in l.* [illegible] *p. continuam. §. ſed ſi accepit circa fin.
ff. de cond. ob cau.* [illegible] le poteſtate quæ aſſignatur viro nobili detento
totum palatium carceris, quod fuit [illegible] ſcuſatus, licet [illegible] alij au-
fugerit, quia non erat præſumendum quod vir nobilis fidem
fallere, hodie tamen nobiles p[illegible] c [illegible] que fidei religionem [illegible] d mer-
catores tranſmittunt [illegible] ipſam fidei præſtationem, & veneratio-
nem ne pili quidem curantes, quæ res honori eralius non breui
ex parte det alur. ¶ [illegible] ſi nolunt acquieſcere conſuetudini
aliorum, cum conſtet ipſos de Caburteto teneri ad decimas, do-
mini Vicinoui hab[illegible] intentionem fundatam per ius com-
mune, & ſic regulam pro ſe, q[illegible] [illegible] debeantur d[illegible] [illegible] a ſecun-
dum quantitatem [illegible] quam nominat [illegible] *ded. [illegible]* ne[illegible] bit
ergo ipſis de Caburteto [illegible] pro[illegible] [illegible] [illegible] contra-
riam regulæ vel alieni conſuetudinis, [illegible] c[illegible] enim dominis Vi-
cinoui quod habent regulam [illegible] ſeu conſuetudinis pro ſe
Bart *in l. quo[illegible] ff. quis caut.* Iaſ. [illegible] *cætera.* [illegible] *not ff. de leg. 1.* Dec. *in c. in
præſentia col. in.* 7 *ad fin. de proba.* cum infinitis ſimil. quæ poſſem cu-
mulare. Illa [illegible] [illegible] præſumptio [illegible] in fauorem dominorum Vici-
noui iuuatur ex [illegible] [illegible] m[illegible] facultates omnes, in [illegible] ſit me-
tu de quantitate decimarum *l. ſum* [illegible] *C. de probat. c.* [illegible] *ſane.
de verb. ſignif.* nam præſumitur pro [illegible] [illegible] ſumma [illegible]
tibus. *clem.* 1. *de proba.* adeo quod niſi nobiles de Caburteto [illegible]
probent. domini Vicinoui non poſſunt nisi obtinere. ¶ [illegible]
ſtremo, vbi eſſet neceſſaria probatio ex parte dominorum Vi-
cinoui, illa reperitur facta per teſtes in alia mat[illegible] & [illegible]
cauſa alias examinatos, qui videntur [illegible] h[illegible] c in l[illegible]
conuentione [illegible] de quam com[illegible] [illegible] qu[illegible]
runt vt ſtetur ex [illegible] q̃ parte teſtibus [illegible]
antecelſorum vtriuſq; partis examinatis [illegible]
nis viſibus dubitandum non eſt, quia poſſunt † par[illegible] [illegible] 19
nire q̃ ſtetur probationi perfectæ. *[illegible] cum cæ* [illegible] *and.* [illegible]
Bel. *in l. fi. C. eod. tit. & in auth. ſi quis in aliquo documento. C. d.* [illegible]
& ſequitur Alex. *in l. Titia diuortium colum.* 4. *ad fin. ff. ſolut. matri.*
Iaſ. *in* [illegible] *l. admonendi. colum.* 39. *ff. de iurtur.* a fortiori valet [illegible] con-
uen[illegible] de dando [illegible] em probationi de ſe perfectæ, licet [illegible] ius ef-
fectus forte non extenderetur contra ita paciſcentes. ¶ Rur[illegible]
videntur probare illi teſtes ſemiplene etiam de iure communi
attenta multitudine ipſorum teſtium, etiã quod inter alias [illegible]
fuerint examinati & in alia cauſa ſecundum Alex. *in l.* [illegible] *pe co*[illegible]
20 [illegible] *verſ. ſortius dic. de. vend.* Iaſ. *in l.* [illegible] *apud quem col.* [illegible] *verſ.* [illegible] *in.
C. de* [illegible] *& in l. admone[illegible]* [illegible] *column.* [illegible] *adde* [illegible] *de* [illegible]
ci. Neap. *deciſ.* 396. *colum.* [illegible] plus conſtat quod etiam p[illegible]

ratione religionis ad eam quantitatem decimas ſoluetur per acta exhibita, ideo maiorem præ[illegible] in quæſtione ipſi debebent, Taurini Aymo Crauetta ex Saulliano.

Summaria.

1 *Iuramentum cum ſit ſpecies probationis & duret terminus publicandi poteſt [illegible].*
2 *[illegible] probare per teſtes & iuramentum.*
3 *[illegible] probandi, quia non [illegible] eſt quæſitum ius aduerſario poteſt iuramentum offerri.*
4 *An poſſit deferri iuramentum litis deciſorium, niſi deferens aliquid probauerit [illegible] quam ſemiplene.*
5 *[illegible] impleta probatione.*
6 *[illegible] probatorio ſit aditus locum iuramento, modo non fuerit datum ad probandum & probatum habendum.*
7 *[illegible] tollens exceptiones, eas tollere non cenſetur quæ in continenti probari poſſunt.*
8 *[illegible] nullitatis impedit executionem ſententiæ quando eius probatio in continenti offertur.*
9 *[illegible] obſcuro eſt, dandus eſt fauor probationibus.*
10 *[illegible] in dubio debet eligere partem minus præiudicialem vtrique parti.*

CONSILIUM CCVII

Reſponſio ad dubia Magnifici Domini Antonii de la Ripa, an quis teneatur iuramentum ſubire, quia pars aſſumpſit onus probandi.

Divino ſubſidio ex corde poſtulato. Reſponſiones ad dubia Magnifici dom. Antonii de la Ripa ex Viguno, collateralis dom. Famulaſci & condomini [illegible], viri integerrimi & iuris ſtudioſiſſimi mihique colleg. exoptatiſſimi, quia poſtea iudicaui ad formam ipſarum reſponſionum, dicitur quod dominus [illegible] frater Bernardinus non tenetur iuramentum oblatum ſubire, quia pars aſſumpſit onus probandi per teſtes, & in fine dilationis ad publicandum contigit pars ad iuſiurandum pro notabilem deciſionem Salyc. *in l. ſi quis iuſiurandum. Codic. de [illegible] creditu.* Magnifice domine collateralis ad propoſitum dubium D. V. videtur poſſe reſponderi quod [illegible] iuramentum
1 ſit ſpecies † probationis, & duraret adhuc terminus publicandi, quod potuerit offerri iuramentum, & ſic infra tempus probandi, nec eſt verum quod eligens vnam viam cenſeatur re-
2 nunciare aliæ, quando inuicem compatiuntur, quia † poteſt quis ſimul probare per teſtes & iuramentum, prout videmus in eo qui ſemiplene probauit, nam probationem ſuppletur iuramento. [illegible] idem etiam eſt finis vtriuſque remedii, id eſt, vt probetur. *l. quod in heredem. §. eligere ff. de tribu. l. vxor ſiliam. §. varia ff. de leg. 2.* Rom. *in conſil.* 35c. *in 2. dub.* Iaſon. *in l. ſi quis agere vis, in 1. in Cod. de codicil.* [illegible] procul dubio videtur obtinere, quia nondum quæſitum [illegible] ius aduerſario antequam ſit præcluſa via ad probandum, [illegible] durante adhuc tempore probatorio: quo caſu permittitur [illegible] vt per Ias. *in d. l. ſi quis agere.* facit Abb. *in c. accidens de præ[illegible]* variari poteſt electio abſentis ante acceptionem, & ſic [illegible] ius quæſitum. Et ſi dicatur imo videtur incompatibile [illegible] quod quis probet per teſtes & iuſiurandum, quia ſi in eo [illegible] iuret negatiue, & teſtes deferentis iuramentũ loquentur [illegible] vere, deferens nitetur ex teſtibus, & iurans ex iura[illegible] *l. [illegible] §. dato ff. de iureiur.* Item hoc modo poſſet deferri [illegible] cui defertur, ſi teſtes contrarium dicant, quo[illegible] iuramentum poſſe recuſari *l. alias & l. de periurio ff. de [illegible]* Par. *in l. iuſiurandum quod ex conuentione §. fin.* vbi Iaſ. *colum. 6.* [illegible] *iſto modo. ff. de iureiur. not. in l. manifeſtæ ff. eod. tit.* reſpondeo [illegible] illud procederet ſi teſtes fuiſſent examinati, ſed hic teſtes [illegible] examinati non ſunt. Secundo poſſet reſponderi tenendo opin. [illegible] Panor. [illegible] Ias. refert *in d. l. manifeſtæ. ff. de iureiur.* qui vo[illegible] non poſſe [illegible] iuramentum [illegible] niſi deferens [illegible] eſt. Item [illegible] ſemiplene & licet Do[illegible] iuramentum deferri, licet [illegible] probauerit, [illegible] magis latentur [illegible] quando [illegible] quid probaſſet. Nec obſtat quod [illegible] eſt ſupra periurium [illegible]: quia reſpondeo quod aut teſtes examinati plene probant & [illegible] non eſt tra[illegible] probari [illegible] iuramentum [illegible] committeat arbitrio aduerſarii [illegible] plene probaſſe [illegible] *de probation.* [illegible] ſemiplene per [illegible] autem iuramentum [illegible] ex [illegible] probatione

ſemiplene [illegible] oo [illegible] ſeu [illegible] & tunc non poteſt tamen [illegible] iuramento per teſtes qui non probant ſemiplene neceſſe ſemiplene. Ex qua declaratione [illegible] dubitationi [illegible] terminus [illegible] Et [illegible] tale [illegible] ſemiplene durante. Secundo [illegible]
6 quod [illegible]
iuramento, [illegible] probari & probari [illegible] *olim* [illegible] *[illegible] autem poſt terminum ff. de iureiur.* [illegible] probandi & poſt [illegible] ſumi in cauſa [illegible] iuramento. Rom. *in conſ.* [illegible] *ſuper reſponſione col. pen.* [illegible] *tertia quarto.* vbi dicit eſſe pro vero [illegible] *l. generaliter §. 1. C. de reb. cr.* & licet dicat communem opinionem eſſe contrarium, ſed hic non ſumus poſt concluſionem in cauſa. [illegible] omnes caſus in quibus etiam publicatis teſtibus recipiuntur teſtes nihil impediente timore ſubornationis *in textu in auth. at qui ſemel C. de prob. in c. fraternitatis de teſtib.* a fortiori admitti debet iuramentum in quo ceſſat omnis ſuſpicio ſubornationis & [illegible], quia ſi aduerſarius nolit iurare offerens illud præſtare paratus eſt. Et cum hoc modo per viam iuramenti res poſſit in continenti probari, non videtur excludenda talis probatio, ſicut dicitur de † ſtatuto tollente exceptiones quod eas tollere non 7
cenſetur quæ in continenti probari poſſunt. Abb. *in c. ſuper eo. in fin. de offic. deleg. & in c. fin. citata per glo. ibi in verſic. effectum. de reſtit. in integ.* Dec. *in c. ex parte. la 2. col. 4. in 7. fallen. de offic. deleg. & in conſil. 414. columna 2. verſic.* & ad hoc facit etiam Ias. *in l. cum gentium. §. quod ſi ea in pr. ff. de pac.* Similiter exceptio nullitatis impedit executionem ſententiæ † quando eius probatio in continenti offertur. 8
Bartol. *in l. 4. §. condemnatum ff. de re iudic. & in l. fin. Cod. pro ex falſ. inſtrum.* Corn. *in conſil.* [illegible] fortius voluit Oldr. *in conſ. 106. quod litera.* quod diſpoſitio clem. vt calumniis. de reſcrib. non procedit quando probatio nullitatis in cõtinenti offertur. Sed magis in terminis adduco eundem Oldr. *in conſilio 139. Ad habendum in fin.* vbi quod probatio quæ in continenti offertur per iuramentum, fieri poteſt etiã poſt lapſum termini ad probandum, quanto fortius admitti debet probatio quæ in continenti offertur per conteſſionem partis ad oblationem iuramenti. Rurſus in tali oblatione iuramenti agi videtur de fauore animæ & ſalutis eius cui offertur, ne alienum detineat metu periurii, quo caſu termini lapſus non ita conſideratur. *c. pia §. vero de excep. lib. 6.* vbi quod exceptio excommunicationis probari poteſt etiam poſt lapſum termini, quia concernit ſalutem excommunicati, vt diligentius curet abſolutionem & exeat à peccato. quod procedit licet ſtatutus ſit terminus peremptorius ad probandum excommunicationem. *glo. in clem. vnic. in glo. pen. de excep.* ſequitur Geminia. *in conſ. 58. col. 2. poſt med.* Nec obſtat deciſio Salyc. quia dici poteſt quod ſuis rationibus caret per ante relata fundamenta. Secundo reſpondeo quod hic non ſumus in fine probationis, quoniam ſupererant adhuc dies quatuor ad probandum, quo caſu poterant deferri iuramenta [illegible] partium multis, deinde examinari etiam poſt terminum, *vt not. in l. quando. Cod. de teſti. & in l. fin. ff. de fer.* Poſtremo, † vbi res in obſcu- 9
ro eſt, dandus eſſet fauor probationibus. *l. currens. ff. de [illegible] & l. ſeq. ff. de inter. action. l. ne quid. §. de bo. ff. de incen. rui. nau. l. quoniam. Cod. de hæreticis. nota. in l. ſi duo patroni. §. idem Iulianus. ff. de iureiur.* nam debet Iudex veritatem ſummopere iuuare ad lucem perducere. *l. illicitas. §. veritas ff. de offic. præſid. l. fin. ff. de probat.* [illegible] *locum fore.* Aliàs ſcribit Bald. *in conſilio 455. Quidam nomine A.* [illegible] *lib. 1.* quod debet Iudex ad veritatem principaliter eſpicere & eam totis viribus inuenire, allegat text. *in l. 1. §. [illegible] C. de [illegible] quæ pro eo quod interest.* Et hoc modo videtur dominatiu veſtræ [illegible] ſilio Paul. de Caſtr. *in l. 1.* vbi Iaſ. *col. 5. ff. ſi quis caut.* quod Iudex
dubio debet eligere partem minus præiudicialem vtrique parti, nota. Dec. *in conſ. 62. col.* Ideo in dubio Iudex pronunciat appellatorium eſſe deferen[illegible], & appellationem [illegible] tam non eſſe. Laus Deo & virgin. [illegible], Aymo Crauetta ex Saulliano [illegible] D. 10

Summaria.

1 *Conditio ſi de [illegible] offerit ſine filiis maſculis, deficit, etiam ſi decedat [illegible]*
2 *[illegible] a conditionum ſunt ſtricte interpretanda, & debent [illegible]*
[illegible] eſt dubium an talis verba [illegible] vel non, [illegible]

[illegible]

CONSILIVM CCVIII.

In domino Bartholomæo de [illegible] *ex oppido* [illegible]

D[illegible]

[illegible]

fuit [illegible] Bart. in l. 1. *honoratis* [illegible]

[illegible]

[illegible] ſteteſt [illegible] *probat* [illegible] Sed [illegible]

3 [illegible] dubium an [illegible] non [illegible] probat [illegible] dubium [illegible] *ſententia deprobat* [illegible] dubia [illegible] cuius [illegible] Corn. *in conſilio 186 colum. fin. verſic. ad confirmantur premiſſa & in conſil. 304 colum. [illegible] verſ. & quando obſcuritas lib. 3.* [illegible] allegans ſubſtitutum [illegible] comprehendere aliquem caſum, [illegible] tur probat, quia ſemper [illegible] poteſt ſubſtitutio. hoc caſu non loquitur Socin *in conſil. 12. column. 3. in conſil. 63. colum. 8.* [illegible] cedentibus [illegible] dubia pronunciandum eſt [illegible] *conſil.* [illegible] *Decius in* [illegible] *& in conſil. 46. colum.* [illegible] *& in conſil.* [illegible] *teſtator* [illegible] In [illegible] *ff. de vulg.* dicit quod legata & [illegible] dicuntur fauorabilia [illegible] contrarium videtur [illegible] quod nec legata

4 [illegible] & fideicommiſſa dicuntur odioſa & [illegible] interpretanda: [illegible] quod ubi legatum aut fideicommiſſum aliàs non [illegible] interpretatio ad actus validitatem, ſed [illegible] procedendũ, quod ipſum videtur [illegible] Socin. *in l. cum auru. column. pe. verſic. ex quibus* [illegible] *ff. de* [illegible] *& demonſtrat.* ubi [illegible] fideicommiſſum [illegible] non propterea debet conſtitui [illegible] non [illegible] *l. ubi* [illegible] Decius [illegible] *ff. de vulg.* [illegible] ſubſtitutio [illegible] conditione [illegible] ſub eadem conditione,

[illegible] *gloſſ.* [illegible]

[illegible] 6

[illegible] per [illegible]

[illegible] *columna* [illegible]

[illegible] identitatem [illegible]

[illegible] *cap.* [illegible] *& in conſil. 112 lib. 4.* ubi [illegible]

[illegible] omnis promiſſio [illegible] poſtea [illegible] conſentire etiam in [illegible] *ff. de verb.* [illegible]

[illegible] quod in conuentionis conſiderat Paul. [illegible] *in conſil. 410. in fin. lib.* [illegible] Quibus [illegible] obtinere heredes [illegible] Rau[illegible] videntur [illegible] contra eos, & [illegible] ſub correctione. Thaurini Aymo Crauett[illegible] Sauiliano. [illegible]

SVMMARIA.

1 *Venæ ſeu minera ſunt ad* [illegible] *thesauri* [illegible] *quæruntur*
2 [illegible] *conducta.*
3 Cur[illegible]
4 [illegible] *imperium*
5 [illegible] *caſus ſpecialiter expre*[illegible]
6 *Verba* [illegible] *comprehendunt omnia quæ excogitari poſſunt.*
7 [illegible] *intelligitur a muneribus perſonalibus* [illegible]
8 [illegible] *comprehendunt etiam regalia non expreſſa, modo non diſſimile* [illegible]
9 [illegible] *Appellatione.*
10 [illegible] *& ad* [illegible] *quod* [illegible]

CONSILIVM CCIX.

Pro magnifico Comite Fruzaſchi, contra Principem de vena metalli inuenta.

DIVINO ſubſidio ex corde poſtulato Illuſtriſſimus Pr[illegible] Fru[illegible] de loco S. Sec[illegible] pertinent [illegible] catis in inſtrumento [illegible] Deinde dominus C[illegible] in territo [illegible] quam [illegible] metalli ſeu plumbi. Quæritur an ad dominum Fruzaſchi pleno iure pertineat? Breuiter [illegible] quod [illegible] modi † venæ [illegible] theſau[illegible] & inuentoribus 1 quæruntur. Paulus de C[illegible] *in conſil. 3. column. final.* [illegible] *in conſil. 2* [illegible] *o. lib.* [illegible] Ar[illegible] quod poteſt [illegible] vel [illegible] inquirere [illegible] ducta. Secundo [illegible] quia text. *in l.* [illegible] *C. de metall. lib. 11.* volunt quod [illegible] es metallorum & [illegible] ſeo[illegible] partem metalli, & amplius [illegible]

[illegible] ſpecificata reſtringi n[illegible] poſſint [illegible] *tempore. §. Lucius.* vbi gloſſ. & Doctor *ff. de pa. l.* Bald. & Doctor. *in prætextu ſpecierum. & in l. ſi de certa. C. de tranſact.* Alexan. *in conſ. 4 colum. 2. in conſ. 117 colum. 2. l. 1. in conſ. 11. lib. 1. & in conſ. 60. ad fin.* Corn. *in conſil. 16 colum. fin. lib. 1.* Quarto [illegible] inueſtitura loquitur per verba prægnantia & vniuerſalia, ergo omnia comprehendit [illegible] *ſoluta. de iniur. & ibid. l. Iulian. de leg. 3. cap. ſi Rom. 19 diſt.* In [illegible] com-

6 prehendunt † verba vniuerſalia omnia quæ excogitari poſſunt. *[illegible] § cum Poll. [illegible] ff. de vſuris. l. cum virum. C. de fideicommiſ.* So[illegible] 26 *colum. 2. lib.* [illegible] dic. Paul. de Caſtr. *in conſ. 333. dubium videtur primo facie colum. 2. lib. 2.* quod verba vniuerſalia ad ſpecificata reſtringi non poſſunt ſalua ratione [illegible] rmonis, [illegible] ſecus in verbis indefinitis aut generalibus. Alibi ſcribit Alexan. *in conſ. 30. colum. penult. lib. 5.* quod verba immunitatis prægnantia & vniuerſalia extenduntur etiam ad onera inſolita, & [illegible] immunitas eſt odioſa & ſtrictiuris. Ideo ſi a[illegible] cui con[illegible] immuni-

7 tas ſimpliciter, intelligitur à muneribus perſonalib. tantum. *l. qui immunitatem. Cod. de munerib. patr. lib.* [illegible] *l. his pu[illegible] de vacat. mun.* hic autem ſumus in materia fauorabili, quia agitur [illegible] conc[illegible] principis, in qua eius præiudicium tantum verſatur [illegible] *in ff. de conſtit. princ.* & in terminis terminantibus ita decidit Rom. *in conſ.* 2[illegible] [illegible] loquitur in conceſſione facta cuidam, in qua primo [illegible] expreſſi aliqui caſus regalium, deinde [illegible] ta ſunt

8 [illegible] vniuerſalia, dicit Roman. quod verba † vniuerſalia comprehendunt [illegible] regalia non expreſſa, modo non diſſimilia præcedentibus. Idem voluit Paulus de Caſtro *in conſil. 63 quod dic. tradideris. libr. 1.* Rubeus Alexandrinus *in conſilio 50* & [illegible] dixit ba prægnantia & vniuerſalia in conceſſione caſtri etiam conſiderat Corn. *in conſil. 31. columna. 4. ad fin. & column. ſequent. libr. 4.* Decius *in conſil. 169. columna 2. poſt medium verſic. perpetuo propter verbum. omnimodam.* vbi quod verba vniuerſalia geminata comprehendunt etiam iura principi reſeruata puta ſi conceditur iuriſdictio omnimoda. *per gloſſ. in clemen. 1. verbo. omnimodam de foro compet.* Addo Baldum *in cap. quoniam. colum. penult. de testib.* vbi, quando conceditur omnimoda iuriſdictio, [illegible] & mixtum imperium, ſecus ſi concedatur omnis iur[illegible] quod Baldi dictum pro ſingulari & nunquam obliuioni tradendo refert & [illegible] Iaſ. *in l. imperium. colu. 5. in prin. verſ. moueor. ff. de iur. omnium iudic. & in l. ſi [illegible] ff. de ral.* ¶ Fortius voluit idem Ia-

9 ſon *in conſil.* [illegible] quod [illegible] conc[illegible] omnimoda iuriſdictio [illegible] appel[illegible] quod ipſum tamen dictum [illegible] nad[illegible] & de iure [illegible] forte non [illegible] tel [illegible] reſpectu actuum [illegible] *bonus. §. hoc ar-*

10 *mens. de verbor. ſignif.* [illegible]

[illegible]

[illegible]

S[V]MMARIA.

1 [illegible]

2 [illegible]

3 [illegible] *voluntatem* [illegible]

4 [illegible] *ad ſubſtitutionem* [illegible]

5 *Extra* [illegible] *habetur* [illegible] *mortuus,* [illegible] *abortiuum* [illegible]

6 *Partus* [illegible] *mortuum vel viuum quidem, ſed eo tempore* [illegible] *ſic non* [illegible] *poſſe.*

7 *Regula* [illegible] *hereditatem* [illegible]

8 *Sententia debet eſſe conformis libello porrecto.*

9 *Quando* [illegible] *ad cuſtandum* [illegible] *poteſt iudex* [illegible]

CONSILIVM CCX.

Pro D. Honorata in caſu ſubſtitutionis.

DIVINO ſubſidio ex corde poſtulato. Mulier q[illegible] prouincia cum H[onorata] ætatis [illegible] inſtituit p[illegible] [illegible] venturum heredem, cui per ætat[illegible] [illegible] quandocunq; ſine liberis [illegible] [illegible] in quibuſdam bon[illegible] [illegible] mo[illegible] ſtantie ex[illegible] victus, vt dicitur deprehenſus [illegible] quinque menſium mortuus potius quam viuens, [illegible] tempore [illegible] breuiſſimo vixit. Va[illegible] uenisse caſum ſubſtitutionis vulgaris comprehenſæ in [illegible] pendioſa, quæ oritur verbis generalibus: nam de po[illegible] fruſtra agitur, quia non fit à matre ex adueſo aliſo [illegible] cus Rom[illegible] olim Honoratæ dicens illum [illegible] ueturum ſpirantem, propterea, quod in eum [illegible] media pars eius hereditatis. *ex c. Raynut. & cap. Raynut. de teſt.* [illegible] dendum eſt quid iuris. Cir[illegible] hanc conſultationem [illegible] dum eſt quod ita ſubſtitutio facta per verbum commune [illegible] ſtituit, adiectum etiam [illegible] dicitur fideicommiſſar[illegible] bum commune [illegible] vniuerſalem ſubſtitutionem. *l. Lugi. §. 1. & §. generaliter. verſ.* [illegible] *ff. ad Trebel.* vbi [illegible] & Doctor. [illegible] ſi teſta[illegible] [illegible] *de vulgar* [illegible] *in conſil. 4* [illegible] *Codic. libr. 2.* Paulus de [illegible] 341 [illegible] *conſil. 138* [illegible]

[illegible]

no. I.V.D.

Svmmaria

CONSILIVM CCXI.

Vtrum antequam venditor condemnetur ad [illegible] emptionem defenſionis cauſa, neceſſe [illegible] conſtare quod moueatur lis emptori contra formam.

1 DIuino ſubſidio [illegible] de poſtulato. Antequam [illegible] vincatur venditor [illegible] heres ad [illegible] defenſionis cauſæ, neceſſe eſt [illegible] contra formam promiſſionum per venditorem ex his quæ not. Bartol. [illegible] vbi ex [illegible] ſtatutum non opponi poteſt contra inſtrumentum publicum, debet tamen conſtare [illegible] omnia quæ illud inſtrumentum [illegible] publicum, & ſic tale quale requirit ſtatutum. ¶ Similiter [illegible] notorium [illegible] opponi poteſt, debet tamen conſtare [illegible] illud [illegible] notorium eſſe, imo quod [illegible]

2 quod non eſt notorium eſſe non poteſt [illegible] Cardinal. *in conſil.* 54 [illegible] *colum.* 43.

3 ¶ Similiter ſi quis confiteatur ſe occidiſſe aliquem, ex confeſſione condemnari non poteſt, niſi conſtet de corpore occiſi. Angel. *in princip. ff de confeſsis.* Bald. [illegible] *in princip. colum.* [illegible] Iaſon. *in l. ſi quando. in quarta not. Cod. vnde vi.* facit Alexan. *in conſilio* 33 *colum.* 2. *lib.* 1. ¶ Similimodo ſi ſtatutum loquatur de damno dato, conſtare prius oportet fuiſſe damnum datum. Deci. *in conſil.* 410 *colum.* 1 [illegible] facit Bartol. *in l.* [illegible] *ff. de cond. & demonſtrat.* vbi vere contumax condemnari non poteſt ſi Iudex ignoret eum contumacem, quia conſtare [illegible] debet Iudici de contumacia. Dec. [illegible] ¶ Eadem itaque ratione dicamus quod niſi conſtet Iudici moueri controuerſiam emptori contra [illegible] a venditore, quod condemnari venditor non poteſt ad [illegible] & pro hoc adduco Angel. *in conſil.* 177 [illegible] vbi quando venditor non [illegible] defendere, non debet denunciari emptori [illegible] defendat, putat [illegible] quæratur de denunciatione. ſed in caſu iſto non tenetur venditor ad cauſæ defenſionem, quia non conſtat quod moueatur controuerſia contra promiſſionem, nam in inſtrumento [illegible] Barb [illegible] & nunc heres [illegible] contra partem, & [illegible] ergo non aliquid petit [illegible] formam promiſſionis [illegible] ſecundum formam illius reſeruationis. ¶ Benefacit [illegible] Bart. [illegible] *§. penu. ff. quod*

4 [illegible] ſtatutum [illegible] tollat exceptiones contra inſtrumentum non cenſetur tollere exceptionem quæ veniunt ex fonte [illegible] inſtrumenti [illegible] not. Bald. *in l. ex pradeo C. de euict.* [illegible] Alexand. *in l.* [illegible] *Cod.* [illegible] Dec. [illegible] 119 *colum.* 1. [illegible] 198 *colum.* 2. ¶ Simili modo de iſta euictione non debet teneri venditor ſeu eius heres, cum illa fiat ex fonte & verbis expreſſis ipſius inſtrumenti. ¶ [illegible] euictionis vi-

5 deretur quod ſi vnus fratrum in diuiſione acceptet emphyteuticam [illegible] proportione ſua, ſi illa euincatur ſecundum naturam contractus [illegible] non agit de euictione. gloſſ. Bartol. & Bald. *in l.* [illegible] *Cod. famil. erciſc.* Roman. *in conſil.* 103. *colum. fin.* [illegible] *in conſilio* 21. *lib.* 5. quod procedit etiam ſi de euictione [illegible] non ignoro [illegible] accipiens qualitatem rei quod eſſet emphythentica. Aret. *in conſil.* [illegible] 49 *colum.* 7. [illegible] Iaſon. *in l.* [illegible] *Cod. de* [illegible] *in conſil.* 411. [illegible] Paul. [illegible] diſpoſitione hominis [illegible] an ex diſpoſitione [illegible]

7 [illegible] ¶ [illegible] bona [illegible]

[illegible]

1 [illegible]

2 [illegible]

3 [illegible]

4 In caſu [illegible] poſſeſſionem [illegible]

5 [illegible]

6 [illegible] conductor [illegible]

7 [illegible]

8 [illegible]

9 [illegible]

10 Inſtrumentum [illegible] habere non poteſt ante [illegible] conductorem.

11 [illegible] conductori, illud procedit de iure communi.

CONSILIVM CCXII.

Conductores debent obtinere res commiſſas etiam ante conductiones.

DIuino ſubſidio ex corde poſtulato. In caſu [illegible] ſcribendo, puto quod domini conductores [illegible] beant obtinere [illegible] res commiſſas aut deuolutas, etiam quæ [illegible] ante eorum conductionem, quamuis tamen [illegible] declaratio de tempore ipſius [illegible] conductionis [illegible] res emphyteuticæ non dicuntur commiſſæ antequam dominus directus declaraui voluntatem ſuam quod vult [illegible] commiſſi gloſſ. & Bartol. *in l.* 2. *ff. ſi ager vectig.* Bald. [illegible] Iaſon. [illegible] *C. de* [illegible] *emphyt.* & idem [illegible] *colum.* 6. [illegible] *C. de* [illegible] *poſſeſ.* [illegible] Dec. [illegible] 144 *colum.* [illegible] *poſt med. verſicul. praeterea etiam* 140 *colum.* 3 [illegible] vbi [illegible] quod ſecundum aliquos [illegible] ſententia declaratoria. & idem Dec. *in conſil.* [illegible] Quum [illegible] hoc de ſententia declaratoria in emphyteuſi firmat [illegible] D[illegible] alios referens *in conſilio* 18, *colum.* 4. *poſt med. verſicul.* [illegible] licet idem Deci. tenuerit contrarium *in d. conſil.* 146 [illegible] in emphyteuta Eccleſiæ. Idem etiam, quod requiritur ſententia declaratoria, videtur velle Iaſon. *in l.* 2. [illegible] *Cod. de iure emphyt.* [illegible] not. per

8 poſt alios [illegible] *not. C. de tranſact.* vbi generaliter [illegible] quando aliqui inducitur ipſo iure pœna, [illegible] imponitur, licet non requiratur [illegible] diſpoſitione, [illegible] tamen declaratoria in his quæ [illegible] *6. not. Gem* [illegible] *lib.* 6. & not. Bald. *in* [illegible] Gem [illegible] *colum.* 4. [illegible] Dec. [illegible] *conſilio* 53 [illegible] emphyteuta [illegible] ſoluere, tamen [illegible]

[illegible]

[illegible] int [illegible] ſi [illegible] n eſt præſen [illegible] app [illegible] in ſubſeq [illegible] nte de [illegible] emphyteuticatio [illegible] [illegible] ni directus ſeu alio [illegible], declarare un vol [illegible] m de tempore Modernorum con [illegible] torum. tunc [illegible] res videntur com [illegible] iſſæ, & ſic [illegible] dentur [illegible] ante verba [illegible] tionis, conſequenter & eius diſpoſitio [illegible] detur eſſe locus. *l. 4. §. totiens. ff. de d* [illegible] *l. quod inſtitutum ff. de te-ſtam. milit.* [illegible] ad hoc quod di [illegible] tempus illud pe [illegible] [illegible] od diſpoſitio efficaciter ſortitur effectum *l. cum notiſſimi.* [illegible] *§. fin. autem* [illegible] *Cod. commun.* [illegible] *l. declaraudae l. praeſitum. §. pen. ff. de precar.* quæ nunc dicit Ro-
4 man. [illegible] *conſ.* 110. *Super eo quo primo quæritur. columna* [illegible] † quod Lucana conſtitutio admittens probationem iuramenti poſt decennium, intelligitur de decennio a tempore ortæ obligationis efficaciter, nec ante [illegible] illud decennium, licet ante [illegible] ſet nata obligatio, ſed non efficaciter, [illegible] ita bona emphyteutica non dicuntur commiſſa efficaciter ante ſecutam declarationem domini directi & ſententiam declaratoriam, vt
5 ſupra. Facit quod dicimus quod [illegible] con [illegible] atur certus terminus ad ſoluendum, ſi tamen ante [illegible] onem debeat præcedere aliqua liquidatio ſeu declaratio, [illegible] terminus autem factam declarationem ſeu liquidationem. [illegible] *conſ. 94 colum. pen. verſ. ſed terminum aſsignatum.* Corn. *in conſ.* 144. *colum.* [illegible] *lib. 1.* [illegible] ante declaratam ſeu liquidatam [illegible] directi, non poſſunt dici res in commiſſum cecidiſſe, cum talis declaratio [illegible] ¶ Optime [illegible] quod [illegible] in materia ſubſtitutionis, [illegible] decidendum [illegible] cap [illegible] vel incapax ſubſtitutioni, inſpicitur tempus euenientis caſus ſubſti-
6 tutionis, ideo ſi quis eo tempore nondum eſſet † in rerum natura, diceretur incapax, nec admitteretur ad ſubſtitutionem. *l. increuent ff. de leg. praeſtan. l. cum qui poſt ff. de condit. & demonſtr. l. cum patet §. hæreditatem. ff. de leg. 1.* Paul. de Caſtro *in conſilio* 16. *Viſo dubio* [illegible] *& dubius* [illegible] *columna* [illegible] *libr. 2.* Alexandr. *in conſilio* 81. *colum. 1. ad fin. verſicul. nam præſupponitur lib. 5.* Socinus *in conſil.* 13. *colum. 1. verſicul. arbitror ego. libr. 1.* Cornel. *in conſilio* 301. *colum.* [illegible] *ad fin. verſic. ſed licet comprehendat. lib. 3. & in conſil.* 17. *colum. 2. ad fin. verſic. item quando* [illegible] *lib. 4.* Dec. *in conſil.* 105. *colum.* [illegible] *verſicul. tertio hoc idem* in propoſito noſtro iſte primus conductor tempore euenientis commiſſionis bonorum emphyteuticorum, non erat capax, quia non erat amplius conductor, igitur ad ipſa bona male aſpirat, ſicut dicitur de ſubſtitutione, [illegible] valet argumentum de vltimis voluntatibus ad contractus & e contra. *l. ſeruum filii* [illegible] *cum qui chirographum. ff. de leg. 1. cum ſimil.* ¶ Rurſus primus conductor petit ſibi deberi eiuſmodi commiſſiones tanquam conductori, igitur debet probare ſe eſſe conductorem de tempore commiſſorum bonorum, quæ aliter non debentur ex for-
7 ma inſtrumenti, quia † qualitas adiecta verbo debet adeſſe ſecundum tempus verbi *l. in delictis. §. ſi extraneus. ff. de noxa.* Bartol. & Docto. *in l. ex facto. ff. de vulg.* ſed magis in terminis adduco Bart. *in l. ſuſceptores. C. de ſuſcep. & Arch. lib. 11.* vbi quod ſolutio debet fieri ei qui fuit officialis tempore ſolutionis, non ei qui fuit officialis tempore quo fieri debuit ſolutio, niſi officialis antiquus qui non exegit, iam ſoluiſſet de ſuo. Sed ex lectura inſtrumenti apparet quod tempore commiſſionis non erat amplius conductor, ergo debet ſuccumbere. ¶ Quinimo fortius dici poteſt quod licet pœna caducitatis & commiſſionis bonorum commiſſa eſſet durante tempore primæ conductionis, ſi tamen facta eſſet exactio poſt finitam conductionem, adhuc non deberentur iſtæ pœnæ primo conductori, conſiderando hoc modo: ille
8 conductor † ex forma conductionis, fructus pendentes in bonis conductis, tempore finitæ conductionis ſuos non faciebat, ſed collectos & perceptos tantum: & idem videtur eſſe de iure communi cum nummis quis colit. *iuxta not. in l. defuncta. ff. de vſufruct.* Bartol. & Doct. *in l. diuortio. in princip. ff. ſolut. matrim.* Iaſon *in l. ſi quis nec cauſam. §. res pignori. ff. ſi cert. pet.* ſed quicquid ſit de iure communi, ſatis eſt quod ex pacto ita cautum eſt, igitur ſi finita conductione, non poteſt percipere fructus, ergo nec iſtas pœnas, quia dicuntur fructus pendentes antequam exigantur Bald. *in l. fi. C. de fruct. & lit. expen.* pulchre Soc. *in conſ. 2. In cauſa Baptiſtæ Serrae. colum. 1. ad fin. colum. ſe. in lib. 1.* quod maxime obſtaret quia primus conductor circa executionem illorum bonorum quæ in commiſſum ceciderunt, nihil laborauit, ſed tantum ſecundus conductor, ergo commodum habere non debet, ex eo quod Angelus ſcribit *in l. ſi poſſeſſor. §. ſed & ſi. ff. de petit. hered.* vbi ſi ex for-

[illegible] in ſtatuto poteſtas debet habere [illegible] partem condemnationum, & vnus poteſtas condemnauit, alter vero exegit, quæritur [illegible] debet [illegible] primo poteſtati, qui condemnauit, ergo ſecus [illegible] refert & ſequitur Benedict. de Acoltis de Aretio. *inter conſil. Senen. conſ.* [illegible] *Conſideratis omnibus columna 5. verſicul. videtur quod concluſio libr. 1.* & idem Socinus *in conſilio* 70. *colum. fin. libr. 4.* Deci. *in conſilio* 654. *ad fin.* not. Alexandr. *in l. diuortio. § ſi vir columna penult. circa fin. verſicul. puto tamen iſtam opin. ff. ſolut. matrim.* Iaſon *in l. mor. colum.* [illegible] *verſicul. vltimo in quantum iſte text. ff. de iuriſd. omn. iud. & in l. ſi vdea. Cod. de his quib. vt indign.* ſuper quo tamen multa dici poſſent, ſed iſta ex abundanti ſcripſi, quia ſumus extra caſum Angel. & Alexandr. cum hæc bona nullo modo eſſent commiſſa tempore primi conductoris, quo tempore dominus nondum declarauerat voluntatem ſuam. ¶ Confirmatur iſta
concluſio, † quando dominus declarauit voluntatem ſuam & 9
expulit emphyteutam, poteſt [illegible] penſionem petere præteriti temporis, ſecundum Bart. [illegible] *de iur. emphyt. per auth. in quarum. C. de ſacroſan. Eccleſ.* cum quo tenet Cyn. Salic. Petr. de Anchar. Iacob. de Aret. & Anton. de Butr. prout ibi re [illegible] *col. 39. ad fin. verſic. in quantum.* Bart. *in l. mem bro.* [illegible] clare appare [illegible] quod ante [illegible] declarationem & executionem adhuc [illegible] emphyteuta nec bona ſunt commiſſa, quia tunc peteretur omnes fructus incœpti, non penſio. & licet Iaſon [illegible] teneat contra Bart. poſt alios ab eo relatos, tamen eorum impugnatio nihil obſtat ad hanc concluſionem: nam tenentes contra illa dicunt quod debet fieri compenſatio meliorationum quas fecit emphyteuta cum penſione illa præteriti temporis: & ſic non infertur ex ea impugnatione quod ante declarationem domini deſierit eſſe emphyteuta & bona ceciderunt in commiſſum. Facit ad prædicta, nam vt ſupra dixi, emphyteuta ceſſans ſoluere ita demum cadit a iure ſuo ſi dominus vellet, & ſic conditionaliter, ſed pendente conditione non poſſunt bona dici commiſſa. *l. cedere. ff. de verbor. ſignif. cap. ſuper eo de condit. appo.* nec pendente conditione ius vllum competere poteſt ipſi conductori. *l. legata ſub conditione. & l. qui hered. § fin. ff. de condit. & demonſtr.* † hinc dici- 10
mus quod inſtrumentum conditionale executionem habere non poteſt ante impletam conditionem Innocent *in cap. quia. de iudic.* Bald *in l. per diuerſas. in 10. quæſt. Cod. mand.* Paulus Caſtr. & Alexandr. *in l. poſtulante. ff. ad Trebell.* & licet conditio purificata ſit quia dominus voluit, tamen iſta declaratio non poteſt trahi retro in fauorem primi conductoris, ex quo medio tempore ius conditionis & percipiendi eiuſmodi pœnas fuit tranſlatum in alium conductorem, quo caſu extrema non ſunt habilia ad inducendum iſtam retrotractionem, nam extremum a quo fieri debet iſta retrotrahitio eſt inhabile, quia eo tempore bona ſeu iura ſunt in alium tranſlata. *l. bonorum ff.* [illegible] *not. in l. ſi is qui pro emptore ff. de vſucap.* Bart. *in l. quotiens* [illegible] *ff. de nora.* Paul. de Caſtr. *in conſil.* 446. *Ad primum quæſitum reſpondetur, quod dicta bona. in 1. dubio. lib. 1.* Deci. *in conſil.* 247. *colum. 1. poſt med. verſic. nec obſtat, quod poſt talem reuiſionem.* ex quo fundamento etiam apparet non obſtare notata per Imol. & Docto. *in l. diuortio. § ſi vir ff. ſoluto matrim.* prout ibi refert Alexand. quia non loquuntur in pœna ſtatim & pure commiſſa. Nec prænuſſis videtur obſtare dictum Guid. Papæ. *quæſt.* 477. vbi voluit quod † res commiſſa 11
pertinet domino directo, non conductori, quia illud procedit de iure communi, ſecus vbi pacto aliud cautum ſit in ipſa conductione, vel niſi verba conductionis vniuerſalia & prægnantia ad [illegible] pertineant. ¶ Et ita de iure videtur reſpondendum. Thaurin [illegible] Crauetta ex Sauiliano. I.V.D.

SVMMARIA.

1. *Creditor non poteſt apprehendere res ſibi bonorum quibus debitor ceſſit, propria authoritate, ſed iudex* [illegible] *exponantur venalia.*
2. *Actus vſusfructus aſsignatur creditoribus.*
3. *Quamdiu durat vſusfructus in perſona debitoris eius commoda pertinebunt ad creditorem.*
4. *An poſt ceſſionem bonorum, creditori competat ius recantandi.*
5. *Fa dicuntur eſſe in bonis noſtris ad quæ actionem habemus.*
6. *Bonorum appellatio extenditur etiam ad iura & actiones.*
7. *Multa tranſeunt cum vniuerſitate, quæ ſpecialiter transferri non poſſunt.*

CONSILIVM CCXIII.

An remedium habeat creditor facta ceſſione bonorum per debitorem.

DIVINO ſubſidio ex corde poſtulato. Ad primum quæſitum, quod remedium obtineat creditor facta ceſſione bonorum per debitorem, reſpondemus quod non poteſt cre- 1

[illegible]

... quæ vi[illegible] conſideratur ant[illegible] ... reſpondeo[illegible] ... perſon[illegible] creditoris q[illegible] d[illegible] rationem ... modita[illegible] ntum [illegible] petitur perſona debitoris, ideo [illegible] debitore, vel alite[illegible] perſona extincto, vſuſructu[illegible] ... [illegible] ſtructu[illegible] perſona debitoris, eius c[illegible] ... ¶ Ad [illegible] & vltimum [illegible] quia [illegible] aliter ſui quædam bona ſubl[illegible] recuperandi, [illegible] ... bonorum creditori competit ius recuperandi [illegible] ... ¶ Si igitur [illegible] ... Aduerte tamen, quia [illegible] neceſſe quod bona debitoris quæ ceſſit vniuerſaliter [illegible] ... Ideo tutius [illegible] ... Alex. in conſ. 9. [illegible]

SVMMARIVM.

[illegible]

CONSILIVM CCXIV

An donatio poſt mortem intelligatur [illegible] inter viuos [illegible] quomodo.

DIVERSO [illegible] Pu[illegible] ... donationis poſt [illegible] ... *dote [illegible] ſoluto matrimonio* ... *lib.* Cornel. *in conſilio 289.* [illegible] ... turſic: magis conſiderandus [illegible] effectus [illegible] ... *ff. de mortis cauſa* [illegible] ... irreuocabi[illegible] ... ius appoſuerit [illegible] bum, ca[illegible] non debet [illegible] illud [illegible] ... haberet [illegible] ... tam [illegible] verba cauſa mortis [illegible] quam [illegible] ... & quod [illegible] præualet verbis, volun[illegible] ... *l. cotem ferro. §. qui maximos. ff. de publica. in 2. quæſt.* [illegible] *per eum diſputata. Publicanus quidam.* [illegible] aliqui [illegible] ... ſingulos annos, licet ex ſono verborum [illegible] appellabitur locatio, conſidera[illegible] ... quia [illegible] de natura & eſſentia vend[illegible] ... in ſingulos annos, & [illegible] ... ¶ In propoſito, [illegible] ... *Bart. in l. Cornelia* ... *l. 2. pulchre Rom. in conſilio 345.* ... Cornel. [illegible] *in conſilio. 33. columna 3.* ... [illegible] heres [illegible] ... heres, & cum [illegible] inuentum, cenſentur appoſita demonſtratiue, quod ſine dubio procedet, quando [illegible] ... Bartol. [illegible]

[illegible]

[illegible]

10 [illegible]

[illegible] Alex. la[illegible]us & pu[illegible] *Anno domini.*
11 *[illegible]r. 2.* vbi [illegible] ſtu[illegible] nam cum [illegible] tur [illegible] ad [illegible] tam quod [illegible] [illegible] mortis. ¶ [illegible] quod dona[illegible] [illegible] ſeruauit, quæ [illegible] in dona[illegible] tione cauſa mortis, ergo arguitur quod non [illegible] nare ſciat inter viuos [illegible] nare, ne alias pr[illegible] [illegible] prouidiſſe in caſu mortis, *arg. l. hæc ſtipulatio. § diuus ff. vt legat. no. caue. facit text. in l. ſi fundum [illegible] conditione § ſi liberum* vbi [illegible] *ff. de legat.* 1. vbi ex forma [illegible] colligitur voluntas teſtatoris. Æque probandum eſt, in
12 caſu noſtro quod ex † forma donandi, faciendo reſeruationem,
13 præſumatur voluntas donatoris. ¶ Rurſus, reſeruatio facta de a[illegible]ibus bonis confirmat donationem in alijs bonis reſeruatis. Bartol. *in l. quæſitum § denique ff. de fund. instruct.* & excludendo bona reſeruata a donatione, alia non reſeruata cenſetur concludere. *cap. [illegible] l. cum Prætor. ff. de iudic. cum ſimil.* & ſicut in bonis re[illegible] appoſitum eſt pactum quod libere de illis poſſet diſponere [illegible] non [illegible] intelligi quod diſponere non poſſet ad libitum niſi de ſ[illegible] [illegible]bus, vt contrariorum eadem ſit diſciplina. *2. diſt. cap. [illegible] l. quod in rerum. § ſi quid poſt. ff. de legat. 1. l. [illegible] ſi contra.* vbi Iaſon *in 2. notab. ff. de vulg. & pupill. ſub-*
14 *ſtit.* exceptio † enim ſeu reſeruatio facta in aliqua diſpoſitione declarat quid & quantum in diſpoſitione comprehenſum ſit. *l. nam quod liquida. ff. de penu legata.* Decius *in l. 1. ff. de regulis iuris.* ¶ Igitur iſta reſeruatio facta hoc modo declarat, quod niſi reſeruatio facta eſſet, non potuiſſet donator diſponere de bonis nunc reſeruatis, alias quid opus reſeruatione fuiſſet? Optime facit textus *in cap. qui ad agendum ff. de procur. libr.* vbi ſi in mandato procuratoris excipio aliquem caſum in quo requiritur mandatum ſpeciale, ex tali reſeruatione declaratur quod in man[illegible]to includuntur caſus exigentes ſpeciale mandatum, qui alias comprehenſi non cenſentur. Et quod per [illegible] textum ſeu regulam decidit Cornel. *in conſil. 9. column. penult. poſt medium. libr. 3. quod eſt repetitum in conſil. 25. eodem libr. 3.* vbi [illegible]biliter voluit, quod ſi Papa in confirmatione ſtatutorum reſeru[illegible]t aliqu[illegible] ſtatuta, quæ erant nulla, ex hac reſeruatione declaratur volu[illegible]tas Papæ, quod voluerit confirmare omnia alia ſtatuta non reſeruata, etiam nulla, quia alias ſuperflua & inanis fuiſſet illa reſeruatio, ex quo in generali confirmatione illa non c[illegible]mprehendebantur, vt ibi per eum, & licet eum non alleget, hoc voluit Bald. *in [illegible] 1. column. 2. per quos fiat inueſti.* quod dictum Baldi refert & ſequitur Iaſon *in l. final. ad finem. ff. quod quiſque iur.* vbi dicit hoc [illegible] ſingulare, & cordi bene tenendum. *& in l. nummis. column. penult. verſ. pro confirmatione. ff. de in litem iurand.* ¶ Alibi [illegible] nam ſcribit [illegible]biliter Alexand. *in conſil. 116. nec arguendi ſumm. column. 6. verſic. 10 conſidero. libr. 2.*
15 quod † ſi princeps in conceſſione ſua excipit aliquem caſum in quo tertio præiudicium fiebat, ex hac reſeruatione declaratur voluntas principis, quod in caſibus non reſeruatis voluerit tertio præiudicare, refert & ſequitur Dec. *in cap. [illegible] per eodem. column. 2. poſt med. verſic. 2. [illegible] gul. de offic. deleg.* [illegible] *20 column. 2. poſt med.* Itaque iſta reſeruatio quod poſſet diſponere ad libitum de bonis reſer-

[illegible] tat. [illegible] quo etiam multi [illegible] *in conſil.* [illegible] *lib. 3.* † vbi quod 16
[illegible] quando [illegible]
[illegible] 17
[illegible]

[illegible] Sexto [illegible]
[illegible] 122. [illegible]
[illegible] 4. maxime autem attento iuramento [illegible] [illegible] *[illegible]lut. maxim* Dec. *in conſil. [illegible] column pen [illegible]*
[illegible]lutione. quod ſine dubio obtinet quando poteſt [illegible] tio inter viuos, quia non ſubeſt aliqua cauſa p[illegible] quæ ſcribit Socin. *in conſil. 140. column. penult. & in conſil 1[illegible] verſic. adduco etiam in propoſito. libr. 1.* [illegible]
Septimo conſidero, quod fu[illegible] ta donatio pronepotibus & filiis, ex quo arguitur quod voluit donare inter viuos, quia illud
pactum eſt contra naturam † donationis cauſa mortis, de cu- 18
ius natura eſt quod præmoriente donatario euaneſcat donatio, nec tranſeat ad eius filios. & iſtam conſiderationem facit Modern. *in dict. l. nonnunquam.* vbi Iaſon *column. 5. ante finem.* Alexandr. *in conſil. 14. column. 2. verſic. poſtremo etiam libr. 1. & in dict. conſ. 78. libr. 4.* Anchar. *in conſil. 21. & circa iſtam quæſtionem. column. 2. ad [illegible] verſic. [illegible] dictum* Socinus *in l. [illegible]ſcendum. column. 3. ante medium ff. de legat. primo. & in conſil. 53. column. 2. verſicul. poſtremo etiam hæc quæſtio libro 1.* Ferr. *in [illegible] cautela 30. ſecus vulgo.* Adde Baldum *in conſil. 93 ſupra dict. [illegible] libr. 2.* Decius tamen *in conſil. 47 [illegible] column. 2. circa med.* declarat hoc procedere niſi aliæ coniunctæ eſſent in contrarium efficaciores, quod voluerit donator eſſe donationem cauſa mortis, & quod mentio filiorum aut heredum debet intelligi ſecundum naturam ipſius donationis, ſcilicet, poſtquam fuerit confirmata, tranſeat ad heredes. Sed iſta conſideratio Decii videtur procedere quo ad hoc, vt poſſit reuocari ſtantibus talibus coniecturis, non obſtante mentione heredum: ſed non procedit conſideratio Decii quo minus [illegible] tranſeat donatio ad heredes ſi non reuocetur, quod non fieret, ſi eſſet donatio cauſa mortis. Poſtremo cum in donatione verba ſint prægnantia pertinentia ad donationem inter viuos, & fuerit appoſitum iuramentum, debet fieri lata interpretatio. Baldus *in conſil. 446. proponitur quod quidam Nicolaus. libr. 3.* Decius *in conſil. 51 column. 1. & in conſil. 115. column. 2.* Quæ omnia maxime procedunt, † quia licet 19
donatio in qua fit mentio mortis, in dubio iudicetur cauſa mortis. *l. Seia. ff. de donat. cauſa mortis.* tamen a tali conie[illegible]ura de facili receditur, vt interpretetur donatio inter viuos. Cornel. *in conſil. 290. column. 2. libr. 4. per textum in l. cum maritus ff. de pact. dot.* ſed hic multa argumenta, & ea efficacia concurrunt, quæ donationem arguant inter viuos. Vltra quæ ponderanda eſt clauſula omni meliori modo, adiecta in ipſa donatione, ex qua clauſula donatio arguitur inter viuos. Corne. *in conſil. 289. column. 7. poſt medium libr. 4.* Ponderanda eſt etiam dictio omnino, dum dicitur, quod voluit donator eam donationem omnino valere, ex qua etiam dictione iudicatur donatio inter viuos. Corne. *in dict. conſil. 289 column 8. libr. 4.* ¶ Amplius dico, † quod ſtante iu- 20
ramento & pacto de non reuocando, dici debet donatio inter viuos, licet fieret pactum quod reſoluatur donatio præmoriente donatario. Bellamera *in conſil. 209. column. 2. poſt medium.* Quid hic dicimus vbi nullum eſt pactum reſolutionis? Taurini Aymo Crauetta.

SVMMARIA.

1 *Laudemium debetur pro omni alienatione rei emphyteuticæ.*
2 *Appellatione alienationis venit omnis contractus tranſlatiuus dominii.*
3 *Cum lex loquitur de alienatione, debet intelligi de alienatione voluntaria non neceſſaria.*

4 Pro-

[illegible]

[illegible] Emphyteuſis [illegible] in dotem [illegible]

[illegible]

per quem dicunt Do[illegible] quod
6 p[illegible] emphyteuticam in do[illegible] dare ſine [illegible]
[illegible], quia eſt alienatione [illegible] ſequitur Alex[illegible] *in conſil.* [illegible] *lib.* 1 [illegible] *ſin. colum.* [illegible] *Calcar am[illegible]* [illegible] locis Alex[illegible] non decid[illegible] de laudemio, tamen ho[illegible] de laudemio determin[illegible] *l. ſin. colum.* 12. *[illegible] queſt.* [illegible] tenet, quod ſiue detur in dotem fundus emphyte[illegible] inæſtimatus, ſiue æſtimatus, nunquam debet [illegible] laudemium, ex quo alienatio eſt neceſſaria. Idem vult [illegible] *in conſil.* 44 *colum.* 2 *in* 3 *dub.* [illegible] magna dubitabilis, quando erat conuentum [illegible] dominium directum & [illegible] quod deberet ſolui laud[illegible] omnino q[illegible] unquam [illegible]

[illegible]

CONSILIVM [illegible]XVI.

De comparatione literarum.

DIVINO ſubſi[illegible] conde poſtul[illegible] Compara[illegible]

[illegible]

1 *nus. C. de iudic.* Decius *in cap. 1. colum. fin. de probat.* nam † cum a-
mento poteſt renunciari probatiuo, & introducto in odium pro-
hibitis, modo non concernat vtilitatem publicam prin...
te. Alex. *in l. iconſtante. §. quoties ff. ſol. in matrimonio & in l. qui Romæ.*
§. duo fratres. chart. pen. ff. de verborum obligat. in conſ. 11. col. 3. libr. 2. Iaſ. *in l.*
2 *de aſsumen. col. 1. C. de tranſact. cum ſimil.* † Sed probatio fieri non di-
citur per inſtrumentum, etiam ſi probetur identitas literarum
per comparationem requiſitam, quia caret ſcriptura notarius
dictione, loco, [illegible], quæ ſunt neceſſaria. *gloſſ. in l. generali ff. de tabul.*
libr. & in Auth. vt præpoſ. nom. Imper. Bartol. & Moder. *in l. ſi librarius.*
ff. de regulis iuris. & in l. admonendi ff. de iureiurand. vbi etiam Iaſon. *col.*
19. verſ. intellige tamen & in repetit. colum. 64. ad finem. Item caret loco
loci cuius præteritio æque irritat inſtrumentum, vt notatur *in*
dicta l. generali. in l. optimam per Baldum & Cynum *C. de contrah. &*
com. ſtipulatione. Item nulli ſunt teſtes in ipſo inſtrumento quod
prius vult probare per comparationem literarum, ergo fit inua-
lidum. *in Auth. ſed. de fid. inſtrument. § ſed & ſi inſtrumenta cum ibi not. per*
gloſſ. in dicta l. generali & in l. 1. §. editiones. in fine. vbi gl. ff. de edend. Bald.
in l. ſi poſt diuiſionem. C. com. vtr. & ſed ignor. cum ſimil. quæ Alexand.
colligit *in conſil. 66. col. penult. libr. 6.* Cornel. *in conſil. 214. col. 1. lib. 1. &*
in conſil. 220. col. libr. 1. Item deficit ſubſcriptio notarii, quæ ſimi-
liter requiritur iuxta notata *in Rubr. extra de fide inſtrum. in.* Angel.
in conſ. 120. Ad hoc vt ſcriptura. Alexand. *in conſ. [illegible] libr. 2. & in conſ. 14.*
3 *lib. 6.* † Item deeſt ſignum notarii quod ſimiliter videtur neceſ-
ſarium, vt notatur *in cap. 1. & in cap. cum P. Tab. de fide inſtrument.*
Ar... *in d. conſil.* ...o. Baldus *in conſil. 476. ad fin. libr.* . Guido
...*quæſt. 61. circa finem* Decius *in conſ.* ... *col. 1. in fin.* Cornel.
in conſil. 226 lib. 3. in conſil. 94. & in conſil. 118. libr. 4. Licet aliquæ ex
dictis ſolennitatibus de iure non videantur neceſſariæ, maxi-
me in abbreuiatura notarii, modo alias non habeat vitium.
Cynus *in l. contractus. C. de fid. inſtrum.* Alexand. *in dicto conſil. 14. co-*
lum. 2. Decius *in conſil. 447. col. 4. circa med. additio ad Guid. Papa quæſt.*
122. tamen conſueuerunt tales ſolennitates adhiberi. ¶ † Pla-
ne omiſſio ſolennitatis de conſuetudine requiſitæ ita vitiat in-
ſtrumentum ſicut omiſſio ſolennitatis iuris. *glo. in Auth. vt præpoſ.*
no. Imper. §. erit ergo. quam glo. pro not. refert Alexand. *in d. conſ-*
il. 166. colum. penult. libr. 6. & in conſil. 3. colum. 4. poſt med. libr. 3. I-
dem tenet Roman. *in conſilio 65. colum. 2. verſicul. non enim colum.* So-
cinus *in conſil. 145. colum. final. lib. 1. & in conſil. 1. colum. 7. lib. 3.* Idem
econtra quia non vitiatur inſtrumentum ex omiſſione ſolenni-
tatis iuris, quæ tamen de conſuetudine apponi non conſueuit.
Bald. *in conſilio 55. Anno Domini. colum. 2. poſt med. libr. 3.* valet enim
conſuetudo vel ſtatutum diminuens de ſolennitatibus inſtru-
menti, puta quod non apponatur dies vel indictio. Bald. *in con-*
ſilio 402. Super eodem puncto colum. 3. & in conſil. 469. Duo ſunt ſtatuta.
libr. 5. Amplius dico quod etiam abbreuiatura notarii debet ha-
5 bere † omnes ſolennitates requiſitas ad inſtrumentum publi-
cum, alias ex ea inſtrumentum ſumi non poteſt. Bald. *in l. Lucius.*
ff. de teſtam. milit. Angel. *in dicto conſil. 220.* Paul. de Caſtr. *in conſil. 195.*
Viſis que narrantur. colum. 2. poſt medium. libr. 1. Alexand. *in dicto conſi-*
lio 53. colum. 1. verſicul. confirmantur prædicta. lib. 2. Cornel. *in conſ. 191.*
colum. 2. libr. 1. in dicto conſilio 226. colum. fin. in conſil. 316. colum. penult.
verſic. & eſt aduertendum. libr. 3. in conſilio 70. colum. 1. in conſilio 14. & in
conſilio 98. colum. 1. libr. 4. Idem voluit Decius ſibi contrarius *in di-*
cto cap. 1. columna quinta verſicul. & tale ſignum de fide inſtrument. ¶ Nec
obſtant allegata in contrarium, quia Alexandrinus & Docto-
res per Decium allegati *in dicto conſil. 14. colum. 2. lib. 6.* non dicunt
illud ad quod allegantur per Decium, videlicet quod in abbre-
uiatura non requirantur ſolennia neceſſaria ad inſtrumentum
publicum, nec dicunt Doctores quod probet talis abbreuiatu-
6 ra ſine ſolennitatibus iuris. Tantum dicunt quod † mortuo
notario poteſt authoritate Iudicis ex tali abbreuiatura ſumi in-
ſtrumentum. Idem voluit Cornel. *in dicto conſil. 316. colum. penult.*
verſicul. & eſt aduertendum, quod protocollum libr. 3. Curtius Iunior *in*
conſil. 113. colum. 2. vbi Curtius quod viuente notario recurri de-
bet ad eum vt ipſe apponat ſignum & ſubſcriptionem, ſed eo
mortuo recurritur ad Iudicem vt ipſe apponi faciat, ſi viuo no-
tario, recurri debet ad eum & eo mortuo ad Iudicem pro au-
thenticatione abbreuiaturæ carentis ſigno & ſubſcriptione, er-
go manifeſte patet talem ſolennitatem neceſſariam eſſe etiam
in abbreuiatura, alias quorſum attinet curare vt illa authen-
tica & publicata fiat? ideo æquiuocaſſe videtur Dec. dicendo
quod in abbreuiatura non requirantur ſolennia publici inſtru-
menti, fundando ſe ſuper dicto Alex. *in d. conſ.* 14. nam
aliud eſt quærere an abbreuiatura probet ſine ſolennitatibus,
aliud an talis abbreuiatura poſſit authentica & publica fieri. Et
enim ſi talia ſolennia in abbreuiatura neceſſaria non eſſent, lo-
qui ... ut quod ex ea inſtrumentum publicum ſumi poſſet,
quod ipſum tamen Doctores negant volentes, quod ante leua-
tionem inſtrumenti abbreuiatura ipſi publica & authentica fi-
at per appoſitionem ſolennitatum. Nec tamen intelligas quod
omnis abbreuiatura ſolennibus carens publica paſſim authen-
tica fieri poſſit, ſed tunc demum ſi conſtet per teſtes vel ſcriptu-
ram ipſius Notarii quod fuerit rogatus de tali abbreuiatura,
& † quod illam publicauerit. Ita Alexand. *in dicto conſ. 53. col. 3. ver-* 7
ſic. nec prædictis obſt. libr. 2. addo Angel. *in dicto conſil. 220. col.* Idem
voluit Rubeus Alexand. *in conſil. 94.* allegat Rubeus Cornel. *in*
dicto conſil. 94. lib. 4. credo quod allegauerit in fide aliena, nam
Corn. hoc non loquitur, ... alleg. ... Angel. & Alex *in dicto*
conſil. Quæ omnia ſingulariter notanda ſunt, tanquam ſucci &
quæſtus plena, non æque clara explicata ab aliis quos legerim.
¶ Hic tamen aduertendum † quod ſi talis abbreuiatura carens 8
ſolennibus inueniatur in folio ſeparato, non in libro proto-
colli, commiſſarius generalis ad ... andum inſtrumẽta a proto-
collis notarii defuncti non poterit ex tali abbreuiatura inſtru-
mentum leuare, ſed commiſſio ſpecialis requiritur, an autem
Iudex aut ſuperior committere id poſſit, totum reſidet in eius
arbitrio, facta diligenti inquiſitione an talis abbreuiatura ſit
ſuſpecta vel non: nam tunc ſtatuet quod æquum viſum fuerit.
Ita Paulus de Caſt. *in conſ. 11. Viſis & ponderatis his quæ ſupra ſcripta ſunt*
per ſupradictos Doct. col. 9. in conſil. 201. quia in prim. ... col. ... poſt med. lib. cla-
rius idem Paulus *in conſ. 397. Ad primum quæſitum videtur dicendum*
quod dicta ſchedula colum. 1. lib. 1. & in conſ. 195. Viſis his quæ narratur. col. 3.
lib. 1. vbi quod iuſta cauſa extendendi eſt quãdo Notarius mor-
te præuentus talem abbreuiaturam ponere non potuit in libro
protocolli. Itaque † deficientibus ſolennitatibus inſtrumen- 9
ti, de quo agitur, ſi inſtra videtur quæri de comparatione. ¶ Sed
dicet aliquis, hic ſunt duo inſtrumenta, & licet aliqua deficiant,
in ſecundo tamen cenſentur repetita, quæ in primo inſtrumen-
to ſunt appoſita. reſpondeo, quod etiam in primo inſtrumen-
to deficiunt plura ſubſtantialia. ideò ea quæ deſunt non poſ-
ſunt dici repetita. † quia non entium nullæ ſunt qualitates. *l. 1.* 10
ff. de vſufruct. legat. l. 4. ff. locati. l. adeo. §. quod ſi toto ff. de acquirendo rerum
dominio. nec † primum inſtrumentum inualidum poteſt facere 11
ſecundum validum, quia † quod non eſt, nullum producit ef- 12
fectum *l. 4. §. condemnatum ff. de re iudicat.* Et iſta duo inſtrumen-
ta imperfecta ſimul iuncta, non poſſunt facere vnum inſtru-
mentum perfectum, quia vnumquodque eſt adeo imperfe-
ctum quod per ſe operari nihil poteſt. *l. 1. cum gloſſ. Cod. qui num. tu-*
tel. tradit Baldus *in l. ſi quis ex argentariis. §. 1. ff. de edend.* not. per Bar-
tol. & Doct. *in l. admonendi.* vbi Iaſon *in repetit. colum. 89. ff. de iureiu-*
rand. Alexand. *in l. quæ doris colum. 3. ad fin.* & ibi Iaſon *colum. 7. ff. ſo-*
lut. matrimonio. & quod dicimus de eo qui inhabilis eſt quod ha-
bilem conſtituere non poteſt. *de quo in Clem. religioſus. de procurato-*
ribus. per Bartol. *in l. 1. §. item acquirimus. in fol.* vbi Alexand. & Mo-
der. *ff. de acquir. poſſeſſ.* † Simile videmus quod vnus teſtis non i- 13
doneus ſupplere non poteſt defectum alterius teſtis, vt ſcripſi
in conſil. 6. colum. penult. in fine & latius in conſil. 99. columna fin. circa me-
dium. & quod † plura imperfecta perfectum vnum conſtituere 14
non poſſunt, tradit Calder. *in conſilio 5. in fin. tit. de regular. per tex-*
tum in cap. tam literis. in princip. de teſtibus. cap. inter dilectos. de fide inſtru-
ment. & in capit. dum ſanctum. de pœnitentia. diſtinct. 2. ¶ Secundo
reſpondeo, quod ex quo ſecundum inſtrumentum eſt ſepara-
tum à primo, impeditur videtur repetitio *l. fundum ff. de contra-*
henda emptione. Bartol. & Doct. *in l. in repetendis ff. de legat. 3. & in l.*
Sna. §. Cato. ff. d. ... inſtrumentum Bartolus *in conſilio 56. In ... tatio-*
ne. in primo dubio. libr. 1. Bartolus *in conſilio 27. Viſa facti narratione.*
Paulus de Caſtro *in conſilio 275. Super primo quæſito dictum videtur*
dicendum ſubſtitutionem colum. penult. in 5. dubio. libr. 1. in conſilio 16. Viſo di-
cto puncto & dubio. in fine. & in conſilio 1. Super primo quæſito in quan-
tum quæritur in 2. dubio. libr. 2. Alexand. *in conſilio 66. column. 2. circa*
medium. libr. 3. in quibus locis volunt Doctores iſtud procedere
etiam quando in oratione ſeparata eſſet dictio repetitiua. Sed
hoc vltimum firmare hic non audeam vbi eſſet dictio repeti-
tiua, quæ ipſa tamen hic ceſſat. ¶ Rurſus cum non probetur v-
trumque inſtrumentum rogatum eodem tempore, † ſolennia 15
adhibita in vna ſcriptura non cenſentur in alia repetita. Alex. *in*
con. L 5 col. 2 ... 2. ad fin. libr. 2. Decius *in conſilio ... col. 1 circa med. &*
in conſ. 490. colum. 1. igitur ſi inſtrumentum hoc caret ſolennitatibus
quorſum tractatur quæſtio comparationis literarum, finge ſcri-
pturam

ptuꝛam factam ab illo notario circa veritatis præiudicium vt aſſerit pars, co[illegible]nſequitur, notarius publicus ſcripſit instrumentum productum, ergo instrumentum eſt publicum & ſolenne, etenim [illegible] ſcriptura etiam notarii [illegible] priuata nihil probat, neque dicitur publicum instrumentum, niſi obtineat ſolennitates, quarum meminimus ſupra. Ideo dicitur quod non omnis ſcriptura notarii dicitur publicum instrumentum, quia nihil impedit etiam notarios facere priuatam ſcripturam. *l. ſcripturæ. ff. qui potior. in pignor. hab.* Baldus *in l. fin. verſic. 1. opponitur. C.* [illegible] *& in Rubr. Cod. de fide instrument. colum. 4. verſic. ſed dubitatur. &c.* ¶ Obiicienda eſt comparationis exceptio cum nihil omnino noceat *l. ſi duo §. item ſi lis mus. & ibi not. ff. de iureiurando. l. ad probationem la 1.* vbi Baldus *in 2. notab. Cod. de probat. l. ſi defenſor §. qui interrogatus in verſic. ſummatim* & quod ibi Bald. per illum text. *ff. de interrog. act. cap. cum dilectus. vltra med. de electione. cap. cum contingat §. verum de offic. deleg. cap. per tuas. in fine. verſic quarum de Lemonia. facit textus in l. hac ſtipulatio. §. diuus. ff. de leg. no cauſ. l. 1. in prin. ff. de offic. prætoris. l. instrumentorum. Cod. de precib. Imper. offer. l. fin. §. iur. ſtatorum. C. de appel. gloſſ. fin. in cap. legebatur. de maior. & obed.* vbi allegat iura plurima. ¶ Præterea iſta ſcriptura facta fuit à tertio, non etiam ab ipſo Ioan. Petro, ob id licet probetur ſcriptura manu illius tertii, nihil poteſt præiudicare ipſi Ioan. Petro, abſenti nec conſentienti, vt dicitur *tot. titul. Cod. res inter alios acta. & l. ſæpe. ff. de re iudic. cum ſimil.* nec creditur tertio in præiudicium ipſius Ioann. Petri, quod eſſet præſens quando ſcriptura tertii vtcunque notarii ſolennia ad instrumentum neceſſaria non obtinet. † Ad hæc toties admittitur probatio per comparatio-

17 nem literarum quoties instrumentum per quod comparatio fieri petitur, eſt ſolenne *Auth. ſed nouo iure. C. ſi cert. pet.* & ibi Bald. *in vlt. notab* & clarius idem Bald. *in l. comparationes. colum. 5. verſicul. 2. dixi. C. de fide instrum.* ſaltem requiritur quod † ſcriptura, de qua

18 facienda eſt comparatio, teſtium ſubſcriptionem habeat vbi instrumenti publici ſolennia non habet. *d. l. comparationes.* Cornel. *in conſ. 138. colum. 2. & in conſ. 169. colum. penult. lib. 1.* Deciſ. Neapol. *deciſ. 181* ¶ Sed iſtud dictum non ita ſimpliciter placet, quia imo fieri poteſt comparatio etiam ex ſcriptura priuata debitoris, modo conſtet quod ſit ſcriptum manu eius per ſuam cōfeſſionem, vel alio modo, & non aliter. Paul. de Caſtr. *in conſ. 312. ad primum reſpondetur. in 3. dubio lib. 2.* allegat Bald. *in dicta l. comparationes per illum text.* Sed iſto caſu ſi ageretur de ſcriptura propria ipſius Ioan. Petri, illa comprobata per ſolam comparationem literarum non noceret quo ad plenam probationem, vt notatur *in d. l. comparationes.* per Bart. & Doct. *in l. admonendi. ff. de iureiur.* vbi Iaſon *colum. 16. & in repet. colum. 40.* Alex. *in conſ. 114. colum. 2. lib. 7.* & alibi ſæpe Doct. multo minus comparatio literarum dabit fidē ſcripturæ tertii, quia † contra tertium non nocet ſcriptura iuuata

19 comparatione literarum etiam quo ad ſemiplenam comparationem, vt notat Cornel. *in d. conſ. 138.* de quo tamē qualiter procedat, latius dico *in tra. l. meo de antiq. tempor. in* [illegible] *part. vbi videndum.* ¶ Non obſtat ſi dicatur prohibita probatione per teſtes, impleri poſſe probationem per teſtes & instrumenta ſimul. vt pro Bal. & Mod. *in d. l. certi conditio. §. quantum.* Alex. *in conſ. 23. colum. fin. lib. 2. & in conſ. 46. col. penult. circa med. lib. 6.* nam illud procedit quando vtraque probatio pertineret ad principale negotium, puta probo damnum eſſe datum per instrumentum & quantitatem damni per teſtes, at hic teſtes reperiuntur examinari non ſuper negocio principali, ſed pro comparatione literarum, niſi dicamus quod comparatio ordinatur ad finem negocii principalis. Secundo igitur reſpondeo, contrarium procedere quando vtraque probatio eſt perfecta in ſuo genere, quia ſi coniunctio instrumenti & teſtium ad plenam probationem, ſed hic instrumentum nihil omnino probat, nec etiam aliquid probant teſtes, examinati de negocio principali, cuius veritatem omnino ignorant, vbi ad fruſtra tractatur de coniungendis probationibus omnino imperfectis. *l. ſi aduerſus §. quia vero. in l. ff. de excuſ. tut.* not. Bart. & Doct. *in l. admonendi* vbi Iaſ. *colum. 89. in repetitione.* facit idem Iaſ. *in l. vt liberis colum.* [illegible] *poſt med. C. de collat. & in l. Centurio colum. 24. verſ. non obſt. vltra Bart. ff. de vulg. & pupil.* [illegible] ita in terminis reſpondet Alexand. *conſ. 136 lib.* [illegible] Decius *in conſil.* [illegible] *colum. 2. circa med. & in cap.* [illegible] *colum.* [illegible] *de probat.* ¶ Secundo principaliter conſidero præ[illegible]itum eſſe tempus, intra quod implenda erat probatio reſpectu magnificæ dominæ Agnetinæ ex forma conuentionis igi[illegible] poſt tempus fieri non poteſt. *l.* [illegible] *ad liberum. §.* [illegible] *ff. de leg. 2. l.* [illegible] *§. ſi mulier. ff.* [illegible] *agn.* ideo Canonici. quib. facultas competit eligendi intra certum tempus, poſt tempus [illegible] agere non poſ-

ſunt. *cap. ne pro defectu* [illegible] *cap. poſtquam* [illegible] *de elect. de iure patro.* [illegible] & cui mandatur [illegible] ad tempus, poſt tempus [illegible] poteſt. *l. ſi cum dies. §. ſi ſumma. ff. de arbitr. l. 1. §. ſed & iudex.* [illegible] *de* [illegible] ſcribit Rom. *in conſilio 431. In terminis* [illegible] quod actor [illegible]

20 quens ius ſuum intra terminum ſibi conſtitutum, [illegible] renunciare, [illegible] poſtea audiri nullo modo poſſit. ¶ Simi[illegible] alicui competit ius percipiendi fructus intra certum [illegible] eo finito [illegible] recipere non poteſt, licet intra tempus illo non [illegible] e petit. Bald. *in con* [illegible] *lib. 2.* Anch. *in conſil.* [illegible] *ter. circa fin. & in conſ.* [illegible] *Circa iſtam perceptionem col.* [illegible] ¶

21 militer quando ad inſtantiam volentis emere aliquam [illegible] proclama mandat [illegible] officialis, vt ſi quis ius prætendat [illegible] comparere debeat intra certum tempus, alias quod de cetero non audientur, lapſo ipſo termino nihil poſſint oppo[illegible] *l.* [illegible] *eo tempore. Cod. de remiſſ. pig. c. fin. de elect. lib. 6.* Anch. *in conſil.* [illegible] *C. agitatur cauſa quæ vertitur inter nob. vir.* [illegible] ¶ Similiter q[illegible]

22 quid promiſit vēdere intra certū tempus, poſt tempus vendere non cogitur. *l. 2. C. de pact. inter emp. & vend.* Ang. *in conſ. 199.* [illegible] ¶ Similiter ſubſtitutio pupillaris facta ad certum tempus breuius, vltra illud tempus non porrigitur, licet duret adhuc ætas pupillaris *l. ſed ſi quis* vbi Doct. *ff. de vulg.* ¶ Et in terminis quod poſſint partes conuenire & limitare tempus probationum, intra quod lapſu tempore probatio fieri non poſſit, late probat Ale. *in conſ. 158. col. in fin. verſ. nec obſtat ſi diceretur lib. 2.* licet contrarium tenuerit Bald. *in conſil. 317. lib. 4.* de quo tamen Alex. mentionem non facit, ſed ibi Bald. potius loquitur ex authoritate ſua, quam per iuris rationes, cum liberum ſit vnicuique renunciare iuri ſuo. *l. penult. Cod. de pact. cum ſimilib.* & l. cet idem Bald. *in conſilio 61. in 2. dub. lib. 1.* vel in iſto caſu quod probatio fieri poſſit etiam poſt terminum conuentionalem, quando ius partis non eſt factum deterius, tamen dic[illegible] Baldi poſſet procedere antequam oppoſitum ſit in iudicio de lapſu temporis, quod poſſit pars moram purgare ante[illegible] in iudicio deductam; ſed cœpto iam iudicio, & facta oppoſitione hoc fieri non poteſt. Alex. *in conſ. 137. ad* [illegible] *lib. 6.* C[illegible] *in conſil. 12. colum. 1. lib. 1. & in conſ. 99. colum.* [illegible] *poſt medium. lib. 4.* Paul de Caſtr. *in conſil. 70. quia fruſtra. columna 5. ad* [illegible] *namq. ſuffic. Regi Poloniæ libr. 1. & in conſilio 337. Si prima duo ſtatuta.* [illegible] *circa medium, ver.* [illegible] *ſed aduertendum diligenter. lib. 1* nam per oppoſitionem eſt iam quæſitum ius opponenti quod tolli non poteſt *l. ſi ff. de pactis. l. ius noſtrum ff. de regul. iuris.* ¶ Pro hoc quod ſcribit Paul. de Caſtro *in conſilio 278.* Videtur dicendum præfatum. Bartholomæum. *columna 2. lib. 2.* vbi quod actor non poteſt purgare moram poſtquam reo quæſitum eſt ius excipiendi, quia tunc dicitur facta executio ipſo iure, & † poſt executionem [illegible] etiam

23 iure vel ab homine non admittitur purgatio moræ. *l. quì obrem. ff. de condit. indeb. l.* [illegible] *ff. de legat. 1.* Rurſus ſi non admittitur purgatio moræ poſt litem conteſtatam, licet de lapſu temporis adhuc compoſitum non fuerit. *l. ſi ita quis. §. Seia ff. de verb. oblig.* Alexan. *in dicto con.* [illegible] *3. colum. 1. in fin. lib. 1* à fortiori videtur impedire poſt oppoſitionem iam factam de lapſu temporis ¶ Impeditur etiam hic purgati[illegible] moræ prop[illegible] iuramentum. *l. ſi quis maior.* vbi Doct. *Cod. de tran. act.* Imo ceſſante iuramento impeditur moræ purgatio, quia fuit appoſita dies probandi & pœna caſu quo probatio intra tempus non fieret. *l. traiectitiæ. §. de illo ff. de act. & obligat. l. magnam. Cod. de contrah. & com. ſtipul.* Doct. *in dicta l. ſi inſulam ff. de verbor. obligat.* Paul de Caſtro *in dicto conſilio. 88. lib 2.* Alexand. *in dicto conſilio. 158. columna 2. poſt med. lib. 2.* Socin. *in conſilio 179 colum. 4. in fin. verſ. ſed iterum fortius lib. 2.* Nec obſtat quod intra tempus Iudex declarauit tempus non currere, quia [illegible] declaratio habita eſt ad inſtantiam ſp. domini Petri, quæ do[illegible] Agnatæ prodeſſe non debet, † nam actus Iudicis eſt [illegible]

24 iis, nec extenditur ad alias Perſonas. *l.* [illegible] *C. ſi plur. vna ſent.* [illegible] *in l. Iulianus. ff. de cond. indeb.* Alex. *in l. a diuo Pio. § pignora. columna 2.* [illegible] *de re iudic.* Socinus *in conſil. 134. columna 2. circa med. lib. 1. & in conſil.* [illegible] *colum. 1. circa fin. lib. 3.* Decius *in conſil. 321.* Iaſ. *in l. centeſimus. §.* [illegible] *& penult. ff. de verb. oblig.* neque [illegible] intelligitur in iudiciis pe[illegible] e[illegible] eius. *l. ſi ita.* [illegible] *§. Chryſogonus. circa fin. ff. de verb.* [illegible] *facit text. in l. ſi vnus. § ante omnia ff. de pact.* [illegible] dicendo de [illegible] ctibus ad[illegible], quod permittitur *l. cum tem. ff. de re iu.* [illegible] *non* [illegible] *minorum ff. de pig.* Alex. *in l. cum quis col.* [illegible] *de a quib. ber.* [illegible] *lon in l. colum.* [illegible] ideo videntur [illegible] fauorem vnius hæredis non prod[illegible] *ff. de except. rei iudic.* ſimiliter [illegible] *ſi* [illegible] *eſſet §. 1 ff. de p.* [illegible] *facit text. in l. an.* [illegible] *§. 1 ff. de ſidei.* [illegible] ibi quando plures mandaue-

dauerunt mutuari pecuniam alieni, ſi vnus ex eis cõſentus abſolutus ſit, talis abſolutio ei alijs non prodeſt: nam cum ſumus in re diuidua & ſeparabili, non videtur extendendus actus de vna perſona ad alteram: quia ſeparatorum ſeparata debet eſſe ratio. *l. final. ff. de cal. l. Papinianus exuli. ff. de minor. l. ſi maritum. C. de donat. inter virum & vxorem.* Neque impedit quod iſtud negocium videtur pertinere ad dominum Petrum principaliter conſequenter quod exceptio competens videtur prodeſſe & dominæ Agnaxinæ, quæ videtur fideiuſſor: nam iſta conuentio inita non fuit cum principali, ſed cum ipſa domina Agnaxina, ideo principali neque prodeſſe poteſt, neque nocere *l. fideiuſſoru. ff. de pactis.* ideo aſſerta declaratio incogitate fuit conceſſa & facta, neque videtur intereſſe aliquo modo ipſius domini Petri quod obſeruetur iſta promiſſio, quia ex ea cõuentione ſi domina Agnaxina aliquid ſoluat, non videtur locus repetitioni cõtra dominum Petrum, non actione mandati, quod non oſtenditur neq; ſumitur etiam ex longiſſimo tempore. Bal. *in l. 2. C. ſi ex falſ. inſt.* Ang. *in conſ. 1 colum. pen. lib. 4. & in conſ. 191. colum. 2. poſt med. libr. 6.* Socin. *in conſilio 35. colum. 2. lib. 3.* Decius *in conſilio 36. column. 3. & alibi ſæpiſſime.* quod tamen non ita ſimpliciter ſequi ſoleo, quod mandatũ præſumatur ex antiquitate temporis: ſed in tractatu meo de antiquitate temporis latiſſime diſcutio, ideo ad ibi dicta me remitto non actione negocij geſti, quia illa conuentio non videtur vtiliter facta, ſi bene aduertatur, reſtringendo facultatem probandi circa modũ & circa tempus, auferendo beneficium Iuris communis. *l. 2. ff. de negoc. geſt. cum ſimilib. quæ notanda ſunt.* Et ita reſpondeo, ſaluo iudicio ſanior. Taurini. Aymo Crauetta ex Sauiliano. I. V. D.

SVMMARIA.

1. *Vnicuique licet iniungere onus rei ſuæ ex arbitrio.*
2. *Pater poteſt præiudicare filiis.*
3. *Rei ſuæ quis poteſt apponere onus ſeruitutis quod tranſeat in omnem ſingularem ſucceſſorem.*
4. *Quot modis res fieri poſſit..*
5. *Onus ſequitur rem quocunque vadat.*
6. *Cenſus quando debetur quid agendum*
7. *Verba enunciatiua prolata per modum cauſæ inducunt diſpoſitionem. & quando proferuntur per modum modi*
8. *Cui acquiratur ius quando bona conſignantur in æſtimo communitatis nomine ſuo vel alterius.*
9. *Confeſſio partis ad poſitiones eſt pleniſſima probatio.*
10. *Confeſſio dicitur maior quolibet publico inſtrumento.*
11. *Error non præſumitur in maioribus.*
12. *Conuenti ad ſoluendum cenſum obligantur oſtendere quæ bona ſint cenſualia, alias bona præſumuntur affecta onere cenſus.*

CONSILIVM CCXVII.

Pro heredibus Bartholomæi Vianini de monte Caprello contra Ioanninum & fratres eius de Carretis.

DIVINO ſubſidio ex corde poſtulato. Fuit in rerum natura magiſter Petrus de Vberto ex Monte Caprello, qui anno milleſimo quingenteſimo primo, & die vigeſima prima menſis Auguſti confeſſus eſt ſe obligari ad eminam vnam ſiliginis, per ſingulos annos ſub pactionibus & conuentionibus olim initis inter prædeceſſores dicti magiſtri Petri, & prædeceſſores Amedei Villaſchi, à quo Amedeo ipſe Bartholomæus cauſam habuit: per quas cõuentiones fuit impoſitus cenſus annuus eminæ vnius ſiliginis ſextarijs quinque plantati, de quibus infra. Rurſus de anno milleſimo quingenteſimo vigeſimo, & die quarta menſis Maij, memoratus magiſter Petrus profeſſus eſt ſeu conſignauit in regiſtrõ publico Montis Caprelli dicta ſextaria quinque plantati deſignati in tertia parcella ipſius profeſſionis ſeu confinationis cum onere duorum quartonorum ſiliginis, quæ dicitur menſura vnius eminæ. Modo poſſidetur dicta petia per Ioanninum & eius fratres de Carretis conuentos, quibus illatum fuit iudicium ab heredib. dicti Bartholomæi Vianini, in quo duo principaliter petita ſunt. Primo, quod declaratur dictam petiam eſſe cenſualem obligatam ad penſionem vnius eminæ ſiliginis per ſingulos annos. Secundo petitur ſolutio cenſuum præteriti temporis & futuri: videndum eſt an dicatur impleta & probata intentio agentium. ¶ Breuiter concludendum videtur quod ſic: & pro fundamento conſidero, † li-
1 cere vnicuique iniungere onus rei ſuæ ex arbitrio, quia in re ſua quilibet eſt moderator & arbiter *l. in re mandata. Cod. mandati.* etiam in aborendo *l. ſed & ſi lege. § conſuluit. ff. de petitione hereditatis.*
2 ¶ Ideo † pater poteſt bona ſua vendere & precium in male prodicere, non obſtante præiudicio liberorum. *gloſſ. in l. 1. C. de inoffic. donat.* quin etiam competit iudicium iniuriarum in eum, qui alium turbat in vſu rei ſuæ *l. iniuriarum. §. ſi quis me prohibeat. verſic. at ſi quis. ff. de iniur.* Et iniquum eſt non eſſe liberam facultatem ingenuis hominibus diſponendi de rebus ſuis pro arbitrio. *l. 2. in fin. ff. ſi quis à paren. fuer. manumiſ.* & iſta priuatio facultatis dicitur eſſe contra bonos mores. *l. pen. vbi Mod. ff. de pactis. l. nemo ex terris. Cod. de iudæis. l. dudum Cod. de contrah. empt.* & adeo poteſt quis de re ſua facere ad arbitrium, quod illud procedit licet ita faciendo damnum alij inferatur, modo non ita fiat animo principaliter nocendi *l. 1. § denique. de aqua pluu. arc. cum ſimil.* Et ſi licet rem propriam in ſolidum alienare, a fortiori permittetur onus imponere *regul. cui licet. de reg. iur. lib. 6. regul. non debet cui plus. ff. de reg. iur. cum ſimil.* quæ Iaſ. colligit *in l. actionibus. column. 4. in 2. notab. ff. de in litem iurando.* Et hoc eſt quod dicitur licere cuilibet dicere legem rei ſuæ quamcunque voluerit *l. in traditionibus. ff. de pact. l. 1. § ſi conuenerit. ff. depoſiti. l. ſi ſeruus ea lege. ff. de ſeruis export. l. ob res. ff. de pact. dotal. l. 1. ff. de ſolut. & l. 1. Cod. eod. tit.* Anch. *in conſilio 197. Subtiliter. column. fin. & in conſilio 217. Dubium facit.* ¶ Ideo † rei ſuæ poteſt quis appo- 3
nere onus ſeruitutis quod tranſeat in omnem ſingularem ſucceſſorem. *l. cum fundo. ff. de ſeruit. ruſtic. præd. & toto tit. ff. de ſeruit. vrb. præd. l. 3. Cod. de ſeruit.* Bartol. & Docto. *in l. fin. ff. de oper. non. nunc.* poteſt etiam priuatus onus rei ſuæ imponere reale & ordinarium. *cap. verum. de cond. appoſ. cap. cum dilectus. de donat.* Curtius Iun. *in conſilio 68. colum. 4.* ¶ Similiter poteſt quis apponere onus hypothecæ rebus ſuis, eas obligando pro ſoluendis collectis, quo caſu quilibet poſſeſſor talium rerum obligatur ad collectas, licet tranſeant ad Eccleſiam. Bald. *in conſilio 180. Promiſſo ſtatuto. libr. 2. & in conſilio 434. Licet iudex. libr. 3.* Calder. *in conſilio 7. in tit. de conſtit. & in conſilio 2. colum. fin. in tit. de cenſibus.* Anchar. *in conſil. 303. Hoc ſtatutum.* Abb. *in conſilio 26. lib. 1.* Socin. *in conſilio 12. lib. 4.* Curt. Iun. *in dict. conſ. 68.* Calc. *in conſ. vlt. colum. 10. ante med. verſ. iſtam etiam opinionem.* Cor. tamen hoc decidere auſus non eſt *in conſ. 205. col. 2. lib. 1.* Bald. etiam *in conſ. 146. Antiqua querela. libr. 3.* dixit non eſſe bene tutum conſulere ſuper iſtis, ſed iſtud debet intelligi quando tale onus hypothecæ apponeretur principaliter in fraudem & præiudicium Eccleſiæ. Iaſ. etiam *in l. placet. in gl. fin. C. de ſacroſanct. eccleſ.* videtur contrarium, vel licet loquatur in alijs terminis quando prędicta efficerentur tributaria, credo tamen quod aliud dixiſſet Ancha. & Socin. ſi conſilia vidiſſet Anchar. & Soc. modo principaliter in fraudem eccleſiæ quid non fit ¶ Secundo præmitto quod † res poteſt cenſualis fieri duobus modis. Primo facien- 4
do contractum cenſualem proprie, qui contrahitur quando quis tradit rem ſuam alicui, & in eum transfert omne dominiũ directum & vtile cum onere, quod accipiens rem teneatur ſoluere certum cenſum ſingulis annis. *cap. conſtitutus cum gloſſ. penult. extra. de religioſ. dom.* Bartol. *in l. 1. §. 1. ff. de public.* Socin. *in conſilio 167. column. 2. libr. 2.* Iaſ. *in cap. 1. colu. 5. in vſibus feud. chart. 212.* Ad quem modum non fuit hic conſtitutus. ¶ Secundo modo quando quis emeret ab alio annuũ cenſum ſuper re venditoris, & venditor promitteret ſoluere annuum cenſum, obligando & hypothecando rem certam pro ipſo annuo cenſu: & iſto caſu etiam omnis cenſus ſequitur rem quocunq; vadat, ſi autem non eſſet hypothecatus fundus pro ſolutione annui cenſus, ſed ſimpliciter promiſſus cenſus occaſione rei, citra tamen aſſignationem ipſius cenſus ſuper ipſa re, diceretur obligatio perſonalis, quæ fundum non ſequeretur, & iſte eſt verus intellectus. *l. final. ff. de contrah. empt.* & hoc ſecundo modo præſupponitur fuiſſe conſtitutum cenſum. Non negarem tum ex alijs titulis poſſe cenſum conſtitui, puta donationis, tranſactionis, & alijs id genus, tamen conſidero iſtos modos pro non reſpectu illius modi quo cenſus principaliter & proprie conſtituitur ad faciendum contractum vere & proprie cenſualem. ¶ Tertio præmitto † quod 5
onus impoſitum rei ſequitur rem quocunque vadat. *Clem. 1. de cenſibus. vbi gloſſ. l. reſcripto. §. ſecundum. ff. de muner. & honor.* Imo ſi eccleſia acquirat rem feudalem obligatur ad onera vaſalli, quia tranſit res ad Eccleſiam cum onere feudi *in cap. verum. de foro comp.* Hoſt. *in Summa in titul. de iure immunit. §. à quibus. prope princip.* Iaſ. *in l. placet. in 2. lectura in glo. fin. Cod. de ſacroſ. eccleſ.* Idem in fiſco ad quem tranſit res cum ſuo onere *l. 2. Cod. ad leg. Iul. de vi publ.* Abb. *in conſil. 14. column. 2. libr. 2. & quod dixi ſupra de bonis hypothecatis collectis quod tranſeunt in Eccleſiam cum ſuo onere.* Et in terminis cenſus tradit Specul. *in titul. de locat. § nunc aliqua. verſicul. 86.* Cornel. *in conſilio 264. column. 2. circa med. libr. 4.* vbi loquitur in Eccleſia, quod res cenſualis ad eam tranſit cum ſuo onere, notat Decius *in conſilio 164.*

colum. 1. circa med. vbi dicit Ius petendi annuum cenſum competere contra quemlibet poſſeſſorem bonorum tanquam bona ſint obligata pro tali annuo cenſu. *per l. hactenus ff. de vſufruct.* allegat etiam Specul. *vbi ſupra.* Addo Abb. *in conſil.* 30. *colum.* 2. *libro* 2. vbi quod poſſeſſor rei emphyteuticæ poteſt conueniri ad canonem per text. *in §. ſcire. in auth. de non alien. vel.* Ad idem adduco Anch. *in conſil.* 386 *In lite. colum.* 1. vbi quod poteſt agi contra poſſeſſorem rerum ex quib. penſiones debentur, tam pro penſionibus præteritis quam futuris, *dicta l. Imperatores ff. de public. & l.* 2. *C. ſine cenſu vel reliq.* Idem voluit Paul. de Caſtro *in conſil.* 333. *Viſo puncto ſupraſcripto, dico ſiue. libro* 1. vbi quando annua quantitas eſt aſſignata ſuper aliquo fundo, dicitur fundus obligatus, ob id quod agi poteſt contra poſſeſſorem fundi. Ad idem adduco Roman. *in conſil.* 417. *colum* 2. *poſt medium.* vbi quando res eſt obligata pro ſolutione cenſus promiſſi tranſit cum illo onere. Idē tenet deciſio Neapolitana *deciſ.* 95. Ripa *in l.* 1. *§. ſi heres. colum.* 3. *ff. ad Trebel.* Nec iſto caſu videtur neceſſaria diſcuſſio ex quo debetur cenſus aut penſio ex re aut ſuper re ipſa poſſeſſa per tertium, excuſſio enim tunc eſt neceſſaria quando id quod petitur non debetur ex re poſſeſſa per tertium, nec ſuper ipſa re, licet ad ſecuritatem aut cautionem illius debiti res ſit hypothecata. Ita-
6 que quando † debetur cenſus aut penſio ex re aut ſuper re, æquum videtur quod poſſeſſor illius rei teneatur ad præſtationem eiu. Imo vbi agitur de iure mere reali prout ex tributo, non poteſt agi cōtra primum dominum ipſius rei, ſed agi debet contra poſſeſſorem etiam pro tributis præteriti temporis, niſi in ſubſidium quando poſſeſſor non eſſet ſoluendo. Aret. *in conſil.* 105. *In cauſa magnifici. per textum in l. cum poſſeſſor. §. fin. ff. de cenſibus. & in Authent. ſed periculum. C. ſine cenſu vel reliq.* ¶ Quarto conſidero,
7 quod † verba enunciatiua prolata per modum cauſæ inducunt diſpoſitionem. Bartol. *in l. ſi ſocer. § Lucius. ff. ſoluto matrimonio. l. qui volebat. & ibi not. ff. de heredib. inſtituendis.* Alexandr. *in conſil.* 46. *columna* 2. *libro* 1. Decius *in conſil.* 23. *colum.* 3. *& in conſil.* 425. *colum* 1. *ad finem.* ſimiliter diſponunt verba enunciatiua quando proferuntur per modum modi. *l. cum verum. C. de ſent.* ſimiliter probant verba enunciatiua in his quæ dependent à poteſtate partium. Bartol *in auth. ſi quis in aliquo. colum. fin. verſicul. iuxta prædicta quæro. C. de edend.* Decius *in conſilio* 139. *columna* 2. *poſt medium. verſicul tertio reſpondetur.* Et iſta verba enunciatiua ſicut probant contra authorem, ita probant contra ſingularem ſucceſſorem cauſam habentem poſt talia verba enunciatiua. Socin *in conſil* 13. *colum.* 2. *circa medium & in conſil.* 82. *colum.* 2. *ante medium lib.* 3. Et ideo etiam res inter alios acta præiudicat ſingularibus ſucceſſoribus cauſam habentibus poſt rem actam. Socin. *in conſil.* 50. *colum.* 2. *verſ. & ſi diceretur quod talia inſtrumenta. & in conſil.* 67. *columna* 3. *verſicu. hos tamen non obſtare lib.* 4. Sed vltra Socin. allego Anchar. *in conſil.* 44. *Primo de verbis. colum.* 3. *verſic. ipſum ergo.* Roman *in conſil.* 311. *co-*
8 *lum.* 2. *in* 2. *dubio.* ¶ Quinto conſidero, † quod quando aliquis in æſtimo communitatis profitetur, ſeu conſignat bona nomine ſuo, & alterius, acquiritur ius ei cuius nomine fit conſignatio, in odium & præiudicium conſignantis, ſiue probatur ius competere alteri quoad præiudicium conſignantis. *l. cenſualis. C. de donat.* Bartol *in l. rura. Cod. de omn. agr. deſer. lib.* 11. Alexandr. *in conſil.* 10. *colum.* 11. *verſu non probatur etiam lib.* 3. *in conſil.* 147. *colum fin. circa medium libro* 5. *in conſil.* 57. *colum.* 2. *lib.* 6. *in conſil* 57. *colum. penult. verſic. nunc dicam. & in conſil.* 181. *column.* 2. *lib.* 7. Socin. *in conſil.* 46. *columna fin. lib.* 3. *& in conſil.* 6. *colum.* 3. *lib.* 4. Cornel. *in conſil.* 165. *lib.* 3. *in conſil.* 34. *colum.* 4. *in conſil.* 315. *ad fin. lib.* 4. vbi loquitur in terminis quando quis conſignat rem tanquam cenſualem. Decius *in conſilio* 146. *colum.* 6. Ex quibus licet colligere probatam eſſe intentionem agentium, nam probatur ipſos eſſe heredes Bartholomæi
9 Vianini † ex confeſſione partis ad poſitiones, quæ eſt pleniſſima probatio. *toto tit. ff. & C. de confeſſ. l. debitori ff. de iudic.* ideo admittitur probatio contra præſumptionem iuris & de iure ex confeſſione partis. *gloſſ. in auth. ſed iam neceſſe. C. de donat. propter nuptias.* Ideo ſolennitas proceſſus non attenditur vbi eſt confeſſio. *cap. Piſanis de reſtit. ſpol. cap.* 1. *&* 2. *de accuſat. lib.* 6. dicit Baldus *in conſil.* 192. *Proponitur quod in quadam ciuitate. colum.* 2. *circa fin. lib* 2. † quod con-
10 feſſio dicitur maior quolibet publico inſtrumento, & quibuſcunque depoſitionibus teſtium. ¶ Ius autem Bartholomæi probatur primo ex dicto regiſtro, ex his quæ ſcripſimus in quarto fundamento, maxime, quia verba, de quibus in regiſtro, ſcilicet quod illa bona debeant quartas duas ſiliginis, videntur enunciatiua principaliter, & propter ſe: nam verba enunciatiua principaliter & propter ſe, quoties aut conferunt aut ſunt neceſſaria ad actum. Ant. de Butr. *in cap. fin. de ſucceſſ. ab inteſtato.* [Ale]xand. *in conſilio* 15. *column.* 2. *ad fin. lib.* 5. ſed verba regiſtri ant[e] onus perſonia erant neceſſaria ad actum, ſiquidem fun[t] [conſi]gnanda bona cum ſuis qualitatibus ad intelligendum eo[rum] valorem. *l. forma. ff. de cenſibus.* Rurſus fuerunt enunciatiua [iſta] verba per modum cauſæ, ad hoc enim iudicatur aut exp[rimitur] onus rei in regiſtratione, quia propter onus res minus valet, ob id leuiora munera ſuſtinet poſſeſſor *l. fundi partem ff. de contrahenda emptione.* Abb. *in cap. in aliquibus. in* 2. *not. ub. de decim.* Ideo iſta verba enunciatiua probant etiam contra reos conuen[tos] poſſeſſores rei conſignatæ, ex his quæ notauimus in tertio fundamento. ¶ Item cum ipſe conſignator ſeu profeſſor eſſet dominus rei conſignatæ, vt probatur ex confeſſione partis, potuit rem ipſam cenſualem conſtituere, prout oſtendimus in primo fundamento, quod etiam probatur per inſtrumentum confeſſionis in actis productum rogatum de anno milleſimo quingenteſimo primo: vbi fatetur magiſter Petrus illū cenſum fuiſſe debitum longe ante ipſum tempus prædeceſſoribus Amedei de Villaſcho, quæ confeſſio etiam præiudicat ipſis conuentis ſingularibus ſucceſſoribus, prout notauimus in tertia conſideratione, igitur iſta petia planrati tranſiuit ad ipſos conuentos cum ſuo onere penſionis duarum quartarū ſiliginis, vt docuimus in ſecunda & tertia conſideratione ¶ Non omitto vltra præmiſſa probari ipſum cenſum etiam ex pluribus ſolutionibus illatis aut factis tam per ipſum magiſtrum Petrum, vt apparet ex teſtibus & in reſponſione conuent[or]um ad poſitiones agentis. Et licet dicāt ſoluiſſe per errorem, p[robare] debuerat † er- 11
ror, quia non præſumitur in maioribus, *iuxta not. in l. [no]n fatetur. colum. final ff. de confeſſ. in l. an inutilis ff. de accept. in l. ſed & ſi lege. §. ſciret. ff. de petit. hered. in l. ſi adulterium. ff. de adulter.* Propterea eiuſmodi confeſſio potuit acceptari in parte vtili tantum acceptandi cum ſit diuiſibilis, & habeat confitens præſumptionem iuris contra ſe in quantum allegat errorem, ex doctrina Bart. *in l. Aurelius. §. idem quæſiit ff. de libera. legat.* Cornel. *in conſil.* 94. *colum.* 1. *verſic. poteſt autem dici. libro* 3. *not. in l ſi quidem C. de tranſact.* Alexandrinus *in conſil.* 87. *lib.* 1. & alibi ſæpe Doctores. Et iſtud maxime obtinet accedente diuturnitate temporis, quia cogitur quis perſeuerare ad ſolutionem cenſus non obſtante errore. Baldus *in conſilio* 368. *Nunc venio ad merita. colum.* 2. *verſu vi ſciendum eſt. libr.* Anchar. *in conſil.* 10. *Videtur efficaciter. colum.* 1. *ad finem.* Quæ etiam erroris allegatio aperte oſtenditur calumnioſa: nam probatur ex actis cauſa, & veritas cenſus per iura producta, in quibus probatur confeſſio anteceſſorum ſeu authorū aduerſarii. Item probatur ſolutio non longi temporis, quo caſu res videtur extra omnem difficultatem, cum velint Doctores *in l. ſi certis annis. C. de pactis.* quod ſi aliquis ſoluit cenſum annuum per longū tempus decem annorum, cogitur ſoluere in futurum, allegata cauſa præſtationis, profecto illa deciſio non parum eſt dubitabilior caſu noſtro, nam ibi præſupponitur nō apparere d[e re] quæ eſſet affecta onere illius præſtationis, quod his probant[ur]. Rurſus ibi non præſupponitur probata cauſa præſtationis per [ſcri]pturam, vt hic. ¶ Poſtremo, † quando conſtat de ſolutionibus cenſu- 12
um, obligantur conuenti oſtendere quæ bona ſint cenſualia, alias omnia bona præſumuntur affecta onere cenſus. Specul. *in tit. de locat. §. nunc aliqua. verſ.* 76. cuius opinionem dicit veriorem Bald. *in conſ.* 265. *Verba laudi. lib.* 2. & idem Bald. *in conſ.* 225. *Quæſtio eſt de terra lib.* 1. late Socin. *in conſ.* 167. *colum.* 8. *in* 4. *q. lib.* 2. Taurini. Aymo Crauetta ex Sauiliano. I. V. D.

S V M M A R I A.

1 *Quilibet adminiſtrator tenetur obligationem reddere.*
2 *Pater tenetur reddere ſi quid doloſe adminiſtrauit.*
3 *Pater tenetur indiſtincte pro bonis quæ adminiſtrauit, quorum vſuſfructus ipſi non quæritur.*
4 *Mala fides nocet etiam in præſcriptione antiquiſſimi temporis.*
5 *Liber mercatoris in quo caſu facit fidem.*
6 *Probatio dubia & obſcura nihil releuat.*
7 *Verba dubia probationis interpretantur contra eum, qui quærit probare, etiam ſi ageretur de cauſa fauorabili.*
8 *Exceptio probari debet clare & concludenter.*

CONSILIVM CCXVIII.

Pro Marco Struerdo contra Emanuelem in caſu vnius Apotheca.

DIVINO ſubſidio ex corde poſtulato. Intentio Marci Sruerdi videtur probata, † nam quilibet adminiſtrator obligatur

gatur rationem reddere *l.* 1 *§. officio.* vbi Iac. de Aret. & Bald. *ff. de tutel. & ratio. diſtrah.* ideo frater maior & patruus qui adminiſtrarunt bona communia tenentur rationem reddere. Socinus *in conſilio* 46. & 73. *column.* 1. *lib.* 1. & *in conſilio* 213. *column.* 2. *lib.* 2. quin2 imo etiam † pater tenetur rationem reddere ſi quid doluſe adminiſtrauit. Bartol. & Angel. *in l. cum oportet. §. non autem. Cod. de bon. 3 quæ liber.* Aretin. *in conſilio* 72. *Præſupponitur in facto. column. penult. in* 6. *dubio.* Rurſus † tenetur pater indiſtincte reddere rationem pro bonis quæ adminiſtrauit, quorum vſusfructus ipſi patri non quæritur. Bald. *in dicta l. cum oportet. §. final. Cod. de bon. quæ liber. & in l. filius* [illegible] *Cod. familiæ erciſcundæ.* Aretin. *in dicto conſil.* 72. *in* 6. *dubio.* Socin. *in conſ.* [illegible] *2. column. 2. poſt medium. verſicu. pater & mater. & conſilio* 34. *column. penult. ad fin. 6. dubii libro* 1. ergo cum probatum fuerit iſtam apothecam fuiſſe communem, & adminiſtratam per E[illegible] tenetur ad redditionem rationum: imo etiam be[illegible] adminiſtratoris tenetur rationem reddere. *l.* 3. *§. hac actio ff. de* [illegible] *& l. omnes tutores. Cod. arbit.* [illegible] Roman. *in conſilio* 41[illegible] *Quia ſupra* [illegible] *in prin.* ¶ Non obſtat inſtrumentum diuiſionis, quia [illegible] progente, nam excipiuntur quædam nomina debitorum, & bona mobilia, quæ manſerunt indiuiſa, ſed nunc fuit probatum [illegible] bona indiuiſa manſiſſe præter apothecam, id eſt, merces & nomina debitorum apothecæ: ergo perinde eſt ac de mercibus & debitis apothecæ in ſpecie facta eſſet reſeruatio *l. fundus qui locatus. ff. de fund. inſt.* late Modest. [illegible] *qui ſi nominatim ff. de liber. & poſthum.* & qui vult dicere verba diuiſionis referri ad alia bona & plura alia eſſe bona, tenetur probare. *gloſſ. in l. cum de le. ff. de proba.* Baldus *in conſilio* 60. *Generalitas libro* 3. Roman. *in conſilio* 222. [illegible] *in fine. & in conſilio* 276. *Viſo. in fine.* Alexand. *in conſ.* 61. *ad fin. libro* 3. *in conſilio* 71. *column. fin. lib.* 4. *in conſilio* 16. *column. fin. lib.* 5. & *in conſilio* 139. *column.* 2. *ad fin. lib.* [illegible] Guid. Papæ 142. Curt. Sen. *in conſilio* 37. *col. in* 9. *verſic. ſed & contra præmiſſam concluſionem* late Iaſon *in l. ſi conſtante* [illegible] *ſolut. matrim. in l. cum ex cau. ff. de r. iudic. & in conſilio* 34. *column.* 3 [illegible] *lib.* 1. Curt. Iun. *in conſil.* 15. [illegible] *in conſ.* 104. [illegible] ¶ Nec obſtat quod diuiſio petita non fuerit per [illegible] tempus, quo requiritur præſcriptio triginta annorum [illegible] obligatur [illegible] actione perſonali & legali ad [illegible] rationem *l. ſicut & l. omnes. Cod. de præſcript. triginta annorum.* Secundo etiam per triginta annos non potuiſſet præſcribere ob malam fidem: *reg. poſſeſſor malæ fidei* [illegible] ſciret & ſciat
4 apothecam communem, quæ † ipſa mala fides nocet etiam in præſcriptione antiquiſſimi temporis, cuius initii memoria non extaret [illegible], vt late dixi in *conſ.* 146. ¶ [illegible] reſpondeo quod [illegible] fuit diuiſio, [illegible] verbis tranſactionis quæ ob [illegible] petita fuit per viam [illegible] ¶ Non tamen confiteor quod ſi duo [illegible] quam communem, qui [illegible] petere diuiſionem, quia hoc fieri non poteſt [illegible] *C. de annal. excep.* [illegible] & ſequitur [illegible] *Ang. in d. l. ſi non ſort. in. §. ſi* [illegible] *ff. de cond. indeb. & late dixi in conſ.* [illegible] Sed præſcribi poteſt, iuri petendi diuiſione quando [illegible] diſſet longiſſimo tempore rem communem [illegible] & tanquam [illegible] totam, [illegible] requiſitis neceſſariis [illegible] præſcriptionem. ¶ N[illegible] valutem [illegible] non [illegible] probatum, quia iudex poteſt & debet ſupplere circa quantitatem & valorem ex [illegible] quantitate apothecæ & aliis coniecturis. Aret. *in conſ.* 84. [illegible] *conſ.* 160. *col.* [illegible] *med. verſ.* [illegible] *conſ.* 135. [illegible] *lib.* [illegible] *fin.* [illegible] *6.* & [illegible] *4.* [illegible] ideo Ioan. Cald. & Paulus [illegible] in iudicio non ſit probata quantitas & [illegible] iudex tamen male faceret ſi reum abſolueret, quia poteſt æſtimare arbitrio ſuo: refert & ſequitur Corn. [illegible] 26. *ad fi. lib.* 1. *in conſ.* [illegible] *col.* 4. & *in conſ.* [illegible] *ad fin. lib.* 3. quod maxime obtinet, quia [illegible] de mercibus quarum valor poſſit æ[illegible] ſcribit idem Corn. [illegible] *col.* [illegible] *lib.* 3. ¶ Et
5 ſi [illegible] † [illegible] de mercibus exhortat. [illegible] [illegible] culpa eius quæſtas amiſiſſet, puta conſulit mercator [illegible] culpatur, nam ſufficit [illegible] probandum [illegible] earum [illegible] ita Corn. *in conſilio* 21[illegible] *in fin. lib.* 4. ¶ Secundo [illegible] quod illud de quo [illegible] principaliter [illegible], quia redditur facile oſtenditur quantitas & valor apothecæ [illegible] ¶ Non obſtant verba [illegible] ſententiæ [illegible], quia non loquuntur de apotheca, nec probant neceſſario & concludenter, vt requiritur in probatione: nam probatio dubia & obſcura in his releuat *c. in præſentia de probat.* nec poteſt quis declarare probationes aut dicta teſtium obſcura. Bar. *in l. Pomponius. §. ſi plures. in fi. ff. de rei vendi.* ¶ † Sed verba probationis dubia interpretantur contra 6 eum qui quærit probare, etiam ſi ageretur de cauſa fauorabili, puta dotis vel matrimonii. Alexand. *in conſ.* 152. *column.* 1. *lib.* 5. ideo in materia probationis verba non accipiuntur in potentiori ſignific[illegible], ne[illegible] intelliguntur ſecundum ſubiectam materiam. Panorm. [illegible] *probat.* Dec. *in conſ.* 321. *colum.* 4. Alibi [illegible] in Dec. *in c. cum omnes. col.* 1. *in* 2. *lect. de conſ.* quod in materia probationis non fit interpretatio quod actus valeat. Et procedat præmiſſa etiam in inſtrumento ſeu in probatione quæ fit per inſtrumentum. [illegible] verbis aut dictum inſtrumentum ambiguum aut obſcurum non probat, ſed habetur pro non adducto *l. inter dilectos. de fide inſtrum.* Ca[illegible] *in conſ.* [illegible] *in fin. in tit. de donat.* ¶ Similiter procedunt præmiſſa ex parte [illegible] in probatione exceptionis, quia probatio exceptionis dubia non releuat, ſed probari debet exceptio clare & [illegible] *matrim.* [illegible] *de* 7 *probat. l. in except. in prin. ff. de probat. l.* 1 *ff. de except. & ind. c. in præſentia.* vbi Dec. *in* 12. *not. de probat.* Idem in lege ambigua, quæ multipliciter intelligi poteſt. Etenim non operatur vt argumentum ex ea ſumi poſſit. Bart. *in l. non ambiguo. ff. de reb. dub.* Bal. *in l. cert. leg. ff. de* [illegible]. Circa ceſte[illegible] partis nihil ſcribo, quia præſupponitur pro indubitato nihil probare: nec lego eorum teſtimonia. Taurini. Ayino Craucttaex Sauiliano. I. V. D.

S V M M A R I A.

1 *Auus quando tenetur dotare neptem, & an dos cenſeatur collata contemplatione* [illegible] *neptis.*
2 *Dos* [illegible] *opinionem communem data nepti, præſumitur data contemplatione patris, quando auus tenetur ad dotandum.*
3 *Auus an teneatur dotare neptem, ſi pater eſt diues, alias cenſetur facere contemplatione neptis.*
4 *An filia dotata debeatur ſupplementum congruæ dotis vſque ad quantitatem legitimæ.*
5 *Legata iam ſoluta ad integrum Falcidia indebite ſoluta repeti non poteſt, niſi per errorem ſoluta fuiſſet.*
6 *Heres qui non fecerit inuentarium, tenetur ad integra legata, & vltra vires hereditarias: priuatur etiam Trebellianica, contrarium tamen teneo in conſil.* 17[illegible] *multa ſunt addita.*
7 *Legatum ſpurio relictum eſt nullum, niſi relictum fuerit in cauſam alimentorum.*
8 *Quæ alimenta competant ſpurio.*
9 *Alimenta præſtari debent ex redditibus & acceſſionibus.*

CONSILIVM CCXIX.

An auus teneatur dotare neptem, & cuius contemplatione intelligatur hoc factum, ſui vel filii, pro Vbertino.

DIVINO ſubſidio ex corde poſtulato. Licet † datum ne- 1 poti ab auo regulariter cenſeatur collatum contemplatione ipſius nepotis *l. quæſitum.* vbi Bart. & Doct. *ff. de leg.* 1. Alex. *in l. in quartam. column.* 14. *ff. de leg.* [illegible] *in conſ.* 199. *column* 2. *lib.* 2. & *in conſil.* 8. *column* 2. *libro* 3. *in conſil.* 89. *vtrum. column.* 2. *poſt med. lib.* 4. *in conſ.* 139. *column.* 1. & *in conſil.* 179. *column.* 1. *lib.* 5. Corn. *in conſilio* 34. *column.* 2. *libr.* 4. tamen illud non obtinet quoties auus aliquid donat ad quod obligatus de iure. *l. dedit dotem ff. de collat. bon.* nam tunc præſumitur donare contemplatione filii propter quem obligabatur. Etenim obligatur auus dotare neptem quando filius nihil habet in quo dotem conſtituat: igitur dos præſumitur collata contemplatione filii, & perinde habetur atque ſi ipſe filius dotaſſet, ob id eſt [illegible] profectitia, conſequenter imputatur in legitimam. [illegible] *in conſil.* [illegible] *Primo arguitur.* Alex. *in d. l. in quarta col.* 13. *poſt med.* [illegible] *etiam Ang.* [illegible] *med. lib.* 3. *in conſilio* 3[illegible] *teſtamento ſer. Andreæ. col.* 1. & *ſeq. lib.* 4. *in conſil.* 193. *colum.* 2. [illegible] *column.* 2. *poſt med. lib.* 6. & *in conſilio* 154. *column.* 2. *poſt med. lib.* [illegible] dotes conſtitutæ [illegible] abus Petri de Poſcho per Vbertinum auum paternum, imputandæ ſunt ipſis filiabus in legitimam debitam de bonis Petri. Non † omitto quod Corn. 2 *in conſilio* 2[illegible] *column. fin. lib.* 3. non auſus fuit hanc quæſtionem decernere: idem autem Corn. *in conſilio* 34. *colu.* 2. *lib.* 4. [illegible] communem opinionem eſſe quod dos data neptibus ab auo, cenſetur data contemplatione ipſius neptis, niſi aliud probetur, idem videtur ve[illegible] cinus, licet non ita firmare audeat, *in conſil.* 33. *colu.* 6. *circa med. lib.* 3. ſecundum quam opinionem ſequeretur quod in legitimam neptis debitam in bonis eius patris non eſſet imputanda dos data ab auo, quia dicitur eam habuiſſe a patre aut eius contemplatione. ¶ Sed ex præmiſſis apparet quod imo

[illegible]

... contrarium videtur verius, vt per Bart. ... vt per C... Sen. ... colum. 6. post prin. Taurini, Aymo Crauetta ex Sauiliano I.V.D.

SVMMARIA.

1 Permittitur ... [illegible]

2 [illegible]

3 [illegible]

4 [illegible]

5 Index ... [illegible]

6 [illegible]

7 [illegible]

8 [illegible]

9 [illegible]

10 [illegible]

11 [illegible]

12 [illegible]

13 [illegible]

14 [illegible]

18 *Amb [illegible] eſt quam [illegible]*
16 *[illegible] tum.*
17 *De [illegible] qui [illegible] com [illegible] furtum [illegible].*
18 *T [illegible] proprie ſine [illegible]*
19 *Si [illegible] familia committitur, tenetur [illegible]*
20 *D [illegible] arma referens precedentia [illegible] ratibus.*
21 *Appellatio quando proijci videtur.*

CONSILIVM CCXX.

Reſolutiones ad dubia obiecta per Senatum, & magnificum dominum Marcum Guinaudi.

DIVINO ſubſidio ex corde poſtulato. Reſpondeo ad [illegible] obiecta per Magnificum ſupremum Senatum. Et ad primum [illegible] dico, quod † permittitur conſum [illegible] o ex [illegible] & viciſsi mortem propinqui [illegible] licet p [illegible] nihil inter it in hoc, [illegible] animaduertatur [illegible] nocentem *l. [illegible] tamen ff. de accuſ. [illegible] mi-nus ff. ad Turpil.* in quibus locis oſtenditur quod iſtud permittitur etiam fœminis & inhabilibus. Ad [illegible] lem text *in l. vxor. in l. non prohibentur [illegible] l. de crimine. & l. [illegible] omnibus. Cod. qui accuſ. non poſſ.* Et quod [illegible] tus vindictæ competat etiam fœminæ, tenet Rom. & Alex *in l. pro hærede. §. fin ff. de acquir. hered.* Rom. *in l. 3. § Caio. ff. de verbor. obl.* [illegible] Quod ſine dubio videtur procedere in vindicta iudiciali, [illegible] ſecus in vindicta extraiudiciali. Angel *in conſ. 189. V [illegible] facto & ſtatuto.* ſequitur Deci. *in cap. in præſentia. colum. 28. de probat. & in conſilio 531. col 2 poſt med.* Ideo minime erat dubitandum in re tam clara.

2 ¶ Ad ſecundum dubium reſpondeo, † quod tertius cuius interest poteſt comparere in iudicio, & ex perſona ſua cauſam [illegible] gere de cuius [illegible] plene eſt cognoſcendum. *cap. [illegible] de [illegible] l. ſupr. ſend. [illegible] l. ſi ſuſpecta ff de inoffic. teſtam. l. ſi per laſoria & l. [illegible]* & ibi Bartol. *ff. de appell. [illegible] in cap. cum ſuper. de re iudic. & l. a deuo [illegible] §.*

3 *ſi ſuper rebus. ff. eod. tit.* ¶ † Imo poteſt tertius, cuius intereſt [illegible] uenire in cauſa & in iudicio per alium inchoato tam in cauſa principali quam in cauſa appellationis, etiam inuito eo qui primo iudicium inchoauit. *l. ab executore. §. 1. & l. ſeq. ff. de appell. l. 2. ff. quand. appell. ſit. cap. venientes. 2. de teſtibus. & d. cap. cum ſuper. de re iudic.* per quæ iura ita dicit Feder. de Sen. *in conſilio 142. Inq [illegible] ver. ante [illegible] ante med.* Secundo reſpondeo [illegible] quod [illegible] fuit oppo [illegible] de iſta cumulatione perſonarum, [illegible] tenent quæ fieri prohibentur. *l. patre furioſo [illegible] de [illegible] tu. l. a-*

4 *liene [illegible]* Mod. ¶ † Simile videmus in procuratore qui non ad [illegible] in criminalibus, & tamen valet proceſſus [illegible] datur. *[illegible] de re iudic. lib. 6. Bart. in l. penult. §. [illegible] ff. de publ. iud.* Dec *in conſilio 369. ad fin* Rurſus parte non opponente

5 poteſt † iudex laicus cognoſcere de cauſa ſpirituali, [illegible] oppoſ [illegible] non poſſit poſt ſententiam. Anch *in conſ. 78. [illegible] queſtionem colum. 2. ver. conſtat enim.* Item ſi religioſus [illegible] tum ſingu [illegible] vale parte non opponente. Aret. *in conſ. 58. [illegible] colum. 3. ver. ſecundo modo reſpondeo* [illegible] parte non opponente poſt [illegible] reconuentio coram alio iudice, modo ſit ord [illegible] an. And *in c. d. ſpen [illegible] reus quoque [illegible] lib. 6.* Corn. *in con. 3 [illegible] colum. 4. poſt med. [illegible] [illegible] obſtat quod [illegible]* [illegible] quod ſcribit Soc. *conſ. 270 col. 3. verſ. & hoc maxime [illegible]* vbi [illegible] defectus ſolennitatis extrinſecæ non [illegible] ſi pars non opponit [illegible] allegat Compo. *in cap. cum dilectus. de conſi [illegible]* Ant & [illegible] *in cap. ſicut. de re iudi. [illegible] 3. de [illegible]* ¶ Quando non ſita exceptio quod [illegible] perſonarum cumulatio [illegible] debet, eſt [illegible] oppo [illegible] ante [illegible] conteſtatam. Aret. *in conſ. [illegible] 3. colum. 2. verſ. & maxime [illegible]* idem Aretin. *in [illegible] 18. ad fin.* licet [illegible] op [illegible] eſt exceptio [illegible] appellationis, quod fieri non potuit, quia

6 per † appellationem reducitur res ad eum ſtatum in quo erat in [illegible] poſt litem conteſtatam *[illegible]* Barto. Bal. Pau [illegible] Caſt. & Doct. *C. [illegible] Rom. [illegible] Queſtio [illegible] Iaſ. in l. ſi [illegible] ad fin. ff. de v. obl.* [illegible] ſi [illegible] tereſſet delicta [illegible] capitalia [illegible] pecuniam [illegible] ſui [illegible] uentus [illegible] & [illegible] dem [illegible] agit [illegible] quidem proſequen [illegible] iniuriam ſuam, [illegible] propter [illegible] publicum & [illegible] publice illatam, conſtat autem quod [illegible] in [illegible] agere ſimul poſſunt eodem iudicio. *l. 1. & 2. Cod. de conſor. eiu. lit.* Aliud eſſet ſi [illegible] agere [illegible] ad pecuniam, ratione alicuius intereſſe, ſiſcus [illegible] nali [illegible], quia † actio

7 ciuilis & criminalis cumulationem non patiuntur. *l. interdum ff. de publ. iud. [illegible] § 1 ff. [illegible] Bart. in conſ. 115. Super eo quod quaeritur.* [illegible] ciuile cumulare non poſſit cum iudicio [illegible], poſt tamen [illegible] imploratur officium Iudicis [illegible] reſtitutio [illegible] puta [illegible] contra [illegible] Bar. *in l. inter lom. § [illegible] ff. [illegible]* Dec. *in [illegible] verſ. [illegible] iſta regula. Cod. de eden [illegible] § ex maleficiis. [illegible]* accuſetur quis de productione [illegible] teſtium. poteſt inci [illegible] per [illegible] ſententiam latam propter [illegible] Alex. *in l. [illegible] ff. de re iudic.* Soc. *in con. [illegible] 4.* ¶ [illegible] ſi pars primo iudi [illegible] fuiſ-

8 ſet, deinde [illegible] ad [illegible] per eius interitum [illegible] fuit [illegible] Anch *in conſ. 183. [illegible] col. m. 1. & eſt text. in l. [illegible] de d. l. quem [illegible] Alex. [illegible] in conſ. [illegible] col. fin. [illegible] cum ſuper. de re. iudic.* ¶ Ad tertium [illegible] non [illegible] animaduerſas informationes, [illegible] contra M [illegible] Marcum Guinaudi probatur exemptio [illegible] & familiæ ex ſua confeſſione, et [illegible] filiorum Sebaſtiani & Bertrandi [illegible] buit vt nec captus fieret homicida, quod etiam oſt [illegible] us, ſecundus, [illegible], & quadrageſimus teſtes [illegible] eſt, quia qua [illegible] geſimus teſtis eſt [illegible] Magiſtri Marc [illegible] us

9 probat contra eum *[illegible] de præſumpt.* vbi † verum [illegible] quod [illegible] verum dicat *[illegible] ver. an teſtem de teſ [illegible] lib. 6.* ¶ Rurſus poſt exemptionem conatu [illegible] eſt cum homicida, ne [illegible] baulum [illegible] vt [illegible] tus fieret ad [illegible], quinimo opem omnes dederunt vt fugam homicida faceret. Conſideret Senatus ſi delinquens ad eum modum nō vinculis erat cuſtodiendus, nam conuincitur aper-

10 tiſsime [illegible], † quia delinquentem [illegible] quis dicitur etiam poſt delictum, [illegible] delinquentem [illegible] aut [illegible] tenetur pœna, *tit. C. de his qui latro.* ſecundum B [illegible] *furti. §. [illegible]* quæ pœna poteſt extendi vſque ad [illegible] *in l. 1. C. [illegible] de his qui latro.* de qu [illegible] per Matt. *in pract. cauſarum § conſtante. nu. 53* ¶ [illegible] lius videtur geminatum delictum exemptionis, quæ [illegible] ordinando cum exemplo, fuit ratificat [illegible] *ſ. [illegible] men [illegible] et [illegible]* etenim plus eſt facere quam dicere *[illegible] lectu. l. 2.* & not. D [illegible] *112 not. de [illegible]* delictum autem geminatum grauius punitur *l. ſi adulterium [illegible] ff. de adult. l. ſi quis [illegible] ff. de [illegible] l. [illegible] bigamum ff. de [illegible] l. nemo. C. de [illegible] l. capitalium §. graſſatores. & §. famoſos. ff. de pœnis l. [illegible] C. ad leg. [illegible] de vi pub. l. 1. poſt prin.* & ibi oporter [illegible] ex [illegible] tr [illegible] quæ [illegible] fuit [illegible] per dolorem [illegible] [illegible]. Appone [illegible] ſuper [illegible] & [illegible] deicantur de libro [illegible] non ſcrib [illegible] Pſal 77. & appoſuerunt [illegible]. Ideo tot ſunt [illegible] pœnitentur & pœnæ [illegible] delicto [illegible] quot ſunt reiterat [illegible] *tare [illegible] rationem [illegible] ad [illegible] de [illegible] 6.* Gemin. *in conſil. 116 colum 2. ante med.* Memoratæ rationes [illegible] hos magiſtri Marci, imo magis quia delinquentem ſemper ſectabantur, ſi videantur, quartus, vndecimus, decimusſextus, decimusſeptimus, vigeſimus, & vigeſimusprimus imo teſtis vigeſimusſextus dicit [illegible] filiorum magiſtri Marci præſ [illegible] homicida paulo ante homicidium: [illegible] ex 11

his quæ præ [illegible] declaratur animus ſequens. *l. ſi ſeruus plurium. § [illegible]* ordine p [illegible] finem Bal. *[illegible] C. [illegible]* Soc *in conſ. 32. col 6. [illegible] lib. 1.* ex qua [illegible] prop [illegible] & v [illegible] latores delinquentis ſecundum Do [illegible] Bart. [illegible] & not Soc *in conſ. 188 col 1. & 2.* vbi pulchre & late loquitur in hac materia: cum enim dubium quod ad [illegible] ſimus [illegible] reddebatur ex aſſociatione & aſſiſtentia [illegible] armatorum, qui cum eo vert [illegible] [illegible] eundem [illegible] Innoc. *in c. [illegible] de cle. pu.* Alexan. *in [illegible] 8. col. 2. lib. 6.* ¶ Rurſus, iſta [illegible] conuerſatio 12

[illegible] homi [illegible] a perſona flagitioſa [illegible] vt ipſe [illegible] præſtat iudicium contra [illegible] præſertim quia [illegible] fuerant [illegible] ante [illegible] poſt homicidium. Bart. *[illegible] l. ſi plures. §. quæritur & §. ſi par [illegible] 23 q. 1 a ſepe* & dicit B [illegible] *in conſil. 95 [illegible]* quod ex conuerſatione malorum multum mouetur [illegible] iudicium ad torturam. n [illegible] Alexand *in conſil. 119 [illegible] ad fin. & conſil. 54. colu. 2. ad fin. lib. 5.* Matt. *in pract. cauſarum. § ex [illegible] nu. 93.* ob id no [illegible]

[illegible]

... [illegible] vbi quod præſumitur ſcientiam [illegible] habitantes ſimul, ſed [illegible] cohabitant qui vna per id tempus [illegible] armati diſcumbebant, vna bibendo & comedēdu, [illegible] Alex. in conſ. [illegible] lib. 4. vbi quod præſumitur quis [illegible] in loco quem [illegible] frequentare, ſed frequent [illegible] Marcellum homicid [illegible] & ip [illegible]. ¶ Præm [illegible] non [illegible] dunt [illegible] quia potuit actu [illegible] pote quo quis non committebatur Paul. de Caſt. [illegible] 58. [illegible] & [illegible] lib. [illegible] vbi quod [illegible] porro [illegible] Aduert [illegible] loquitur An [illegible] plurimis [illegible] obligari, quod [illegible] non poteſt dic [illegible] ex quo omnino tenet [illegible]. ¶ Sed [illegible] præſumptio ex aliis colectum [illegible] ſupra enar [illegible] locum, cum ſequi cœpe [illegible], & ab eius [illegible] nunquam [illegible] tes, quod pos [illegible]

[illegible]

18 [illegible] de f[illegible] o propri[illegible] m[illegible] Dec *ind. conſ* [illegible] ſed [illegible] ad [illegible] *diligenter & mature vi[illegible]* [illegible] *tur.* [illegible] *inquiſitione de acc. ant. incap.* [illegible] *teſt.* [illegible] etiam Paul. de Caſt. *in conſilio 18 . In caſu* [illegible] *tur viſi colum. 3 & in conſilio 331 In cauſa ſylueſtri colum. 2 circa fin.* [illegible] *Cal[illegible] ipſe dixi conſulendo.* Miſſionem illam pecuniarum [illegible] fuerit pater homicidæ in vltima repetitione. Item [illegible] [illegible] primo negauit miſiſſe pecunias, deinde con[illegible] & poſt confrontationem iterum repetitus, confeſſus eſt. [illegible] iam [illegible] conſanguinei homicidæ, cum eod[illegible] conuerſabantur, præſumitur ergo quod non ignorarent propoſitum homicidæ, præſertim quia arm[illegible] eum ſectabantur: reprehenſi [illegible] ſciebant, profecto auxilii cauſam declinare non poſſunt [illegible] tormenta pro eorum variationibus circa principale negocium pertinens ad auxilium ſi accuratius con[illegible] deremus, & præt[illegible] quia homicida ſtatim atque venit à Pedemonte, diuertit in domum Ioan. Guinaudi, ita deponit pater homicidæ in vltima repetitione: pro his optime facit quod not. Card. *in Clem. ne in agro. §. porro in 4. not. de ſtat. monach.* quod eſt præſumpt[illegible] contra eos qui

19 tenent malam familiam, quia † aliquod mal[illegible] in [illegible] committatur, ipſi domini tenentur, nec excuſant[illegible] propter [illegible] ſantiam, quia debuerunt cogitare illud malum euenire poſſe, cum ſcirent famulos eſſe [illegible] conditionis ad mala promptos. *arg. c. negligere. 2. quæſt. 7. & cap. luct. in prin. de ſimon.* & illud dictum Card. pro ſingulari refert & ſequitur Dec. *in reg. nullum crimen. ff. de reg. iur.* eodem modo imputandum eſt recipienti in domum [illegible] due nam armatum, nu[illegible] qu[illegible] cum ar[illegible] diſcurrentem, & dicemus iuſte fuiſſe relaxatos [illegible] tanq. intioſos. ¶ Ad quartum dubium reſpondeo iſtud [illegible] quærit pars appellans, id eſt, nullitatem atque iniurioſe fuiſſe proceſſum per con[illegible]tiunem, & male [illegible] detentos à carceri[illegible] dimiſſos. Ad quintum dubium [illegible] ideantur acta, probatur dictum Girardum comparuiſſe nomine ſuo proprio, & aliorum intereſſe prætendentium, deinde, in appellatione [illegible] nomine quo [illegible] ſupra & aliorum. Ita proprium nomen [illegible] repetitum in appellatione ex dictis verbis quæ ſupra, hinc eorum

20 nomine, † q[illegible] ita dictio eodem, eſt rel. [illegible] præc[illegible] in ſequentibus *l. tutor ff. de lib. rod. vigi[illegible]* Amplius ſi nomine [illegible] rum tantum appellaſſet & alii noluerint proſequi [illegible] exequi nomine ſuo proprio. *l. ſi ab [illegible] ff. ſi cert. pet.* Al[illegible]and *in conſilio 24. column.* [illegible] *libro 5.* arguendo de contractibus ad iudicia *l. non[illegible]* [illegible] *de pign. act. l. omnem ff.* [illegible] *l. 1. in l. 1. col. circa penult.* [illegible] *ſi quis caut.* Non obſtat quod dictus Girardus non interpoſuerit appellationem apud principem, quia etiam ſi ipſe non appellaſſet omnino, ſed alius diceret appellationem ab alio interpoſitam & introductam, proſequi, & ſic appellatio vnius [illegible] prodeſt, quando eadem eſt cauſa defenſionis omnium, & [illegible] ſit diuidua, ſiue indiuidua. *l. ſi quis ſe[illegible] arg. tim. §. fin. [illegible] ff. de appell. l. 1. Cod. ſi vnus ex plur. appell. cap. pen. de appell.* nec vid[illegible] quo fuerit introducta appellatio, modo rep[illegible]

21 *ſeruus pecuniam ff. de verbor. oblig. & ibi* [illegible] non condemnatus appell[illegible] à ſententia pro intereſſe ſuo [illegible] pro ſeu[illegible] victo qui non appellauit [illegible] ſen[illegible] vetuſt[illegible] Bartol. *in l.* [illegible] *ſententiam* [illegible] *col.* [illegible] *per* [illegible] *de appell.* [illegible] *quoties mil abſente* [illegible] vbi [illegible] & non appellante [illegible] appellare, & appell[illegible] prodeſt [illegible] [illegible] eſt quod factus ſ[illegible] prodeſt [illegible] no [illegible] *familiæ* [illegible] *l. 1. in fin. C. de al.* [illegible] Alexand. *in conſilio 36. col. 4. verſ. præterea* [illegible] *fin. conſ.* [illegible] *2 & in* [illegible] *col. 4. ad finem 15 colum. 8* [illegible] *colum.* [illegible] *poſt num. 3 colum. 12 num 48. & colum. 13 num. 52. ff. de rei vend.* & hoc ſine dubio videtur procedere, quia vniça tantum ſententia relaxationis lata eſt, quæ dicitur indiuidua *l. 1. in fin. iudicio ff. fam. erciſ.* nec potuit nocere vni quin alteri no[illegible] [illegible] ſeratur ſententia in fauorem appellantis, neceſſario [illegible] etiam ad commodum non appellantis, cuius eadem cauſa eſt & defenſio, iuxta not. *in d. c. vna ſententia. ſeu in d. c. pen. de appell.* ¶ Ex quibus omnib. conſequens videtur, non habitam iuſſio[illegible] ſiſem aſſertis iudicum iudicis, à quo per[illegible] benignis ad ſuſpicionem collutionis. Taurini, Aymo Crauetta ex Sauiliano.

I. V. D.

S V M M A R I A.

1 *Verba quitationis quantumlibet generalia debent reſtringi propter æquitatem na[illegible] [illegible] generale recip[illegible] limitationem ob æquitatem.*
2 *O[illegible] æquitatem recedit ur à regulis iur. à communi[illegible] à verbis teſtatoris.*
3 *Verba quitationis generalia non debent pertinere ad caſum continentem iniquitatem, imo impropriantur verba vt æquum iniquo præſumatur.*
4 *Ar[illegible] non poteſt compellere partes ad generalem quitationem vigore genera[illegible]* [illegible]
5 *D[illegible] generalis & vox [illegible] reſtringitur ne quis indebite* [illegible]
6 *Qu[illegible] generali extenſione iure reſtringantur.*
7 [illegible]
8 *Quitatio [illegible] de agitur de vitando damno.*
9 *Minor [illegible] perdit beneficium reſtitutionis in integrum.*
10 *Dolus præ[illegible] arbitrio, qui facimus [illegible] antequam illud [illegible]*
11 [illegible] *quia ignorantia* [illegible]
12 [illegible] *generalis reſtringitur ad* [illegible]
13 [illegible] *quomodo reſtringenda ſit.*
14 [illegible] *ceſſante ratione, ceſſat lex, vbi ratio diſſonat de lege, ceſſat* [illegible] *ratio.*
15 *Generalis* [illegible] *reſtringitur & declaratur ſecundum præcedentia.*
16 *Contractus* [illegible] *renouatur ſi læſio probetur enormis, [illegible] vltra dimidiam iuſti pretii.*

CONSILIVM CCXXI.

Pro fratribus de Helya ex oppido Vigoni.

DIVINO ſubſidio ex corde poſtulato. Emptores quatuor tornatarum [illegible] vaucerunt venditores ab onere deficientis menſuræ, quia dicebatur deeſſe aliquas tabulas ob ſolutionem [illegible] quæ venditores ſoluerunt poſt venditionem, cum ad emptores illi reſpicerent: modo compertum eſt deeſſe menſuram [illegible] tornatæ & vltra. Quæritur ſi contra quitationem poſſit defendere & menſuræ ſupplementum deſiderare, non [illegible] generalibus verbis quitationis. ¶ In hac conſultatione [illegible] poſſe peti ſupplementum menſuræ de[illegible] id ſatisfactionem onerum. Primo, † quia [illegible] quantumlibet generalia debent reſtringi 1 [illegible] *§. 1. & ibi gloſſ. in verbo, æſtimatum in auth. vt ſine* [illegible] quam gloſſ. pro notab. refert & ſequitur [illegible] Pio. *§. ſi in venditione colum. 3. ff. de rei vendicat.* Addo [illegible] *in conſilio 434. Pactum inter* [illegible] *colum. 2 lib. 1.* vbi quod pac[illegible] generale reſtringitur ex æquitate: & ibi loquitur in pulchro caſu & magis dubitabili quam ſit caſus de quo agitur. Similiter [illegible] vtcunque generale recipit limitationem ab æquitate. Bart. *in l. omnes populi. in 6. q[illegible] princip. ff. de iuſtit. & iur.* Socinus *in conſilio 44 colum. 4. ad fin. verſu.* [illegible] *dicta verba, non aliter libera[illegible]* vbi [illegible] quitur nullis verbis prægnantibus & præ[illegible]ſis, non aliter n[illegible] mo[illegible] notat etiam Iaſon *in l. Stichum § ſequitur. in 2. not.* [illegible] *ff. de verbor. oblig.* & dicit Angel. *in conſilio 345 in fin.* quod attendi[illegible] debet æqu[illegible] potius quam [illegible] figura ſtatuti. Alibi dici[illegible] *in conſilio 3[illegible]7. Clar. l. in fin. lib. 3.* quod ſecundum æquitatem naturalem declaratur in[illegible] inſtrumentum. Idem in v[illegible] teſtatoris, quæ etiam decl[illegible] & præſumitur ſec[illegible] æquitatem naturalem. Baldus *in conſilio 255 libro 2. per* [illegible] *l. 1. ff. de tranſſtio teſtamento.* fortius ſi cui recit[illegible] liberum [illegible] tamen intelligitur æquitate ſeruata. Bald. *in con[illegible]7. In* [illegible] *colum 2. poſt med. lib 1.* Ruſſus † ob æqui

2 [illegible] recedit ur à regulis iuris, communi, à ſolennitatib. iuris, [illegible] conſuetudine & à verbis teſtatoris, pulchre Dec. *in reg. in omnibus præ[illegible] ff. de r. g.* [illegible] facit idem Dec. *in cap. ex parte colum. 1 de offic.* [illegible] *quan[illegible] colum 2 Cod. de teſtam. milit.* ¶ Videmus etiam quod generalis excluſio remediorum, non extenditur ad remedia extraordinaria pietatis vel æquitatis cauſa introducta. prout eſt reſtitutio in integrum. Fulg. *in l. vnic. C. quem. Imp. inter pupill. & vidu.* Præpoſ. *in c. dilecto colum. 43. circa med. de appel. lib.* [illegible]7. ſed narratur in facto, quod onera illata à venditoribus excedunt florenos quadraginta, plane à naturali æquitate abhorret, quod eam ſummam cenſerentur liberati à defectu menſuræ vnius tornatæ, cuius valor eſt multo maximus. ¶ Secun

3 do † verba quitationis generalia non debent pertinere ad caſum continentem iniquitatem. *arg. l. ſi pater. ff. de his quæ in fraud. cred.* Ol[illegible] *in conſilio 66. An ex delicto.* Dec. *in conſilio 286. colum. 2. verſic. vnde in illa generali.* Imo impropriantur verba vt æquum iniquo

præferantur. Cal. [illegible] *colum.* [illegible] char [illegible] quod [illegible] ſecundum [illegible] [illegible] ſcribi [illegible] generi [illegible] [illegible] tantum [illegible] quitatio [illegible] [illegible] ſe partes ad faci[illegible] quitation in [illegible] compromiſſi [illegible] quia illud [illegible] præiud[illegible] tetent & [illegible] Corn. *in conſil.* 140 *col.* [illegible] Dec. *in conſil.* [illegible] *colum.* 3. *ad fin.* [illegible] tantum facta per emptore. non debet [illegible] & extendi [illegible] menſuræ adeo magnum per quem ipſi empto[illegible] admodum damnificarentur. Quarto [illegible] alias teſtringitur, ne quis indebite [illegible] Bart. & Doct. [illegible] § *in compenſatione.* C. *de rer.* [illegible] *finul.* vt p[illegible] Dec. *in conſil.* 3[illegible] 6 *col.* 1. & *in conſil.* 38[illegible] *ad fin.* quod maxi[illegible] procedit vbi in quitatione aſſignatur [illegible] pter [illegible] onerum, ex qua ratione [illegible] debet generalis quitatio [illegible] ad quantitatem ipſorum onerum. *l. cum pater.* § *dulciſſimis* [illegible] *ff. de leg.* 2. [illegible] vt per Rom. *in conſ.* 403. 433. & 457. Cu[illegible] *in conſil.* [illegible] quinimo licet in ſcriptura non [illegible] [illegible] putet [illegible] ex ea reſtringitur generalitas [illegible] indebite quis lædetetur & [illegible] *l. ab alio* [illegible] *quamuis* [illegible] per quæ iura ita concludit Angel. *in* [illegible] Martin. [illegible] Abb. [illegible] *colum.* 1. *circa med.* [illegible] *colum.* [illegible] & *in conſil.* 44 *colu.* [illegible] *lib.* 1. & quod hæc re[illegible] ſtringi [illegible] ex oratione coniectura [illegible] Rom. *in conſil.* [illegible] & [illegible] 4. Dec. *in cap.* [illegible] *col.* 1 [illegible] *verſ. adde* [illegible]. ¶ Ruſ[illegible] quando [illegible] agitur de extentione iuris iam conceſſi, licet verba [illegible] vel vniuerſalia reſtringi non ſoleant [illegible] Bart. *in l.* [illegible] tamen reſtringuntur [illegible] indebite patiatur. Bald. *in l.* [illegible] & *in l. terminato* C. *de* [illegible] ſert & ſequitur Alex. *in conſil.* 89 *ad fin.* [illegible] 106 [illegible] ¶ [illegible] generalis diſpoſitio [illegible] indebite quis [illegible] *l. Marcellus* [illegible] vbi Soc. *in* 2. *not.* & Iaſ. *in* 4. [illegible] Potiori [illegible] vendi [illegible] ad lucrum [illegible] [illegible] admitterentur, & cuilatura emptorum, niſi reſtrictio fiat verborum generalium ¶ Reſt[illegible] ſiderata cauſa quitationis [illegible] ſuit ſolutum [illegible] cit commodum ipſorum emptorum, [illegible] Angel. [illegible] Soc. *in conſil.* 16. *col. penult. circa med.* [illegible] *lib.* 1. Et quando cauſa eſt [illegible] regula quod ea ceſſante ceſſat diſpoſitio. [illegible] ceſſante [illegible] conditione [illegible] [illegible] ergo [illegible] quitatio ceſſante cauſa quitation[illegible] [illegible] alias emptores [illegible] [illegible] non [illegible]

[illegible]

[illegible] quod [illegible] alias [illegible] generalis [illegible] vniuerſalis [illegible] debent [illegible] ratio finalis [illegible] [illegible] Sextum [illegible] quitatio [illegible] per errorem [illegible] *verbis generalibus* [illegible] ¶ Septimo [illegible] [illegible] ergo verba quitationis generalia debent reſtringi [illegible] Optime facit [illegible] [illegible] ¶ Octauo [illegible] [illegible] ex ſuo manifeſte deprehenditur [illegible] non poteſt, niſi quod [illegible] [illegible] ¶ Nec obſt[illegible] Cæſarius Senior *in conſil.* [illegible] non eſſe [illegible] beneficium [illegible]

verſ. maior dixerit. Anch. *in conſ. 226. Legitur in canone colum. 2.* P[illegible] de Caſt. *in conſilio 53. Viſis actis & conſideratis omnibus. colum. 2. circa med. libr. 2.* quod tamen videtur intelligendum probata [illegible] mi-noris quod ſciret ſe minorem. Abbas *in* [illegible] *1. column. 3. libr. 1.* Item videtur de mente Angel. *in conſilio* [illegible] *colum. pen.* vbi quod minor mendax aſſerens ſe maiorem non perdit beneficium minoris ætatis, niſi animo decipiēdi ita dixerit, quia animus decipiendi in dubio non præſumitur, ſed dicendum videtur non præſumi niſi probata eius ſcientia. ¶ Imo fortius ſi impubes [illegible] ſtat ſe adultum [illegible] alius contrahat cum eo, habet locum *auth. ſacramenta puberum C. ſi aduls. aduer. vend.* ratione mendacii impu-be[illegible] q[illegible] locum non habuiſſet, ſecundum Iaſ. *ibi. colum. 4. poſt G[illegible] de C*[illegible] quod tamen intellige probata [illegible] ipſius [illegible] quod ſciret ſe impuberem per ſupradicta. ¶ [illegible] mulier vendens fundum d[illegible] dotalem non eſſe, [illegible] *l. ſi ſine. C. ad Vellean.* Alexan. *in conſ. 122. colum. pen.* [illegible] *in conſi. 119. colum. penult. lib. 4.* vbi etiam ſubdit quod [illegible] [illegible] fundum taceat eum feudalem [illegible], ſed [illegible] [illegible] libere ius in re, ſed ſe facturum quod [illegible] do-[illegible] directus, præſumitur in dolo. not idem Alexand *in conſil.* [illegible] *colum. pen. & in conſilio 95.* vbi etiam quod arguitur dolus ex ob-[illegible] te ſermonis, puta, ſciens ius nullum ſibi competere, di-cat ſe vendere ius quod habet: eodem modo præſumeretur in do-l[illegible] [illegible] illum venditorem, qui cum ſciret tantum menſuræ [illegible], illum tacuit, ſolum dixit tabulas aliquas dee[illegible]. ¶ Si-ile videmus quando quis vendit aliquod animal cum [illegible] [illegible] & magagni[illegible], non excuſatur ex tali aſſertione, quam-[illegible] obligetur de [illegible] ſi ſciebat illa vitia. *l. quæritur. §. ſi ven-d[illegible] ff. de ædil. edict.* Angel. & Doctor. *in l.* [illegible] *ff. de pactis.* Corn. [illegible] *2. colum. fin.* [illegible] *conſilio 81. lib. 2.* Alibi ſcribit idem Corn. *in conſ.* [illegible] *colum.* [illegible] *tamen in caſu noſtro. lib. 2.* quod præſumitur dolus in eo qui tacet alienationem ante factam: aliibi [illegible] Paul. de Ca[illegible] *in conſ. 411. Viſo facto & dubiis mihi traditis. col.* [illegible] *ad fin. in 1. parte* quod præſumitur dolus in tacente qui [illegible] a-lium de beneficio ſibi competenti. Alibi ſcribit idem Paul. in *conſilio 465. Viſo compromiſſo colum. penult. poſt med. lib. 1.* quod præſu-

10 mitur † dolus in arbitris, qui faci[illegible] ratificari laudum ante-quam illud legant, & [illegible] ignorent eius tenorem. *vt dixi in conſ.* [illegible] *colu. 3. in fin.* Iaſon *in conſi. 42. colum.* [illegible] *circa med. & in conſ. 191. poſt med.* ¶ Scientia autem præſumitur in venditore quod ſciret nume-rum tornatarum: *l. quiſquis. C. de*[illegible] *vend. not. in l. 2. col.* [illegible] quod maxime obtinet q[illegible] promiſit de [illegible] tornatis, licet cum d[illegible] aliquarum tabularum, ideo ſi ignorabat [illegible] ad [illegible] numerum c[illegible] primere. [illegible] ignorabat ex [illegible] oportu[illegible] [illegible] prout aſ-ſe[illegible]. & ſic quod habuit animum [illegible], & q[illegible] [illegible] non [illegible] de quatuor, [illegible] dem, [illegible] illud agat, quod tempore contra[illegible] [illegible] q[illegible] quod ill[illegible] [illegible] & [illegible] *l.* [illegible] *ſi hominem. in fin. an lib. C.* [illegible] *Iaſonum. §.* [illegible] *ff. de min. & d.* [illegible] nam hoc modo melior eſt [illegible] culpoſi & negli-gentis, qui ante non inueſtigauit an eſſet numerus quatuor tor-natarum cum ad eum numerum vellet vendere, licet cum ali-quo defectu, quam viri diligentis *contra l. Seruius. ff. quod vi aut clam.* *conſimil.* [illegible] in terminis ignorantiæ, quod ignorantia vnius alii nocere non debeat, tradit Paul. de Caſt. *in conſ. 94. Claram* [illegible] [illegible] *2. ante med. lib. 2. per tex. in l.* [illegible] *ff.* [illegible] *& ſed. igno.* [illegible] *§. ſi quid cum pupillo. ff. de his quæ in fraud. credit.* Alibi [illegible] Alex. *in con.* [illegible] *lib. 7.* quod audiri non debet allegans [illegible] vt lucrum ſentiet, ſed hic lucraretur aduerſarius ex

11 [illegible] ignorantia. Ideo † miſſus in poſſeſſionem poſſeſſore non ci-t[illegible] non excuſatur ſi dicat quod ignorabat poſſeſſorem, quia hoc mo[illegible] ignorantia ſua lucrum ſibi afferret, & poſſeſſori da-mnum [illegible] *in l.* [illegible] *C. de edict. diui Adri. tolle.* Alex. *in conſ.* [illegible] *col. 1. li. 2.*

12 ¶ No[illegible] quælibet diſpoſitio licet generalis reſtringitur ad ſua[illegible], [illegible] quod credatur libris mercatorum, re-ſtringitur ad cauſam mercantiæ: ſimiliter ſigillis officialium cre-[illegible] in [illegible] quæ pertinent ad eorum officium, quia ta-[illegible] libris mercatorū & ſigillis officialium fuit pro-pter mer[illegible] & [illegible] Alex. *in conſ. 114. colum. 2. lib. 7.* Decian. *poſt* [illegible] ¶ ſimiliter legatum reſtringi-t[illegible] cauſa [illegible] licet quando cauſa eſt n-[illegible] [illegible] *in con.* [illegible] *col. 3.* [illegible] *& hoc intelligo poſtea lib. 2.* cauſa autem ſin. qui-

tanti [illegible] relatio onerum, ergo † quotatio generalis ad quanti- 13
t[illegible] onerum [illegible] eſt [illegible], aut ſaltem ad modicum plus vel minus [illegible] rationem, nam quando cauſa eſt fina-lis prout [illegible] oſtendimus, [illegible] cauſ. diſponit de ipſo actu & [illegible] cedere non [illegible], ſicut dixit Bal. *in c.* [illegible] *l. cedentique fine de* [illegible] *ff.* quod † vbi lex diſponit de ratione, 14
attend[illegible] diſponit de lege, attendi-tur [illegible] Bal. quod vbi ratio eſt generalis & finalis [illegible] de lege, tefe[illegible] & ſequitur Corn. *in conſ.* [illegible] *col. 6. in conſ.* [illegible] *in conſ. 216. colum. 2. lib. 3. & in conſ.* [illegible] *col.* [illegible] *lib. 4.* [illegible] ratio-nem [illegible] finali [illegible] non quota-tio d[illegible] quando [illegible] ¶ [illegible] alis non ex[illegible] ad [illegible] poſſe[illegible] cap[illegible] *A paul. ff. de tranſact. l.* [illegible] *ff. de* [illegible] *l. obli*[illegible] per quem [illegible] Alex. *in con.* [illegible] *46* [illegible] [illegible] ad[illegible] verba generalia qui[illegible] læderentur emptores ergo ſunt por[illegible] da. ¶ [illegible] de-
ci no † generali [illegible] 15
præcedentia. *arg. l. ſed.* [illegible] *ff.* [illegible] *bre. 2. colum. 1. verſ. nec obſt. quod videntur* Corn[illegible] *2. & in conſ. 177. col. 3.* Dec. *in con.* [illegible] *3. col.* [illegible] *col.* [illegible] *circa med.* ergo verba generalia quotationis [illegible] ſi modo ſit defectus aliquarum tabularum tantum [illegible] in præcedentibus dictum, non etiam ſi defectus ſit [illegible]
¶ [illegible] & vltimo licet hoc iure vni[illegible] 16
[illegible] contractu etiam iuratus, diſtritum [illegible] betur cum [illegible] longe vltra dimidiam iuſti pre[illegible] *ſacramenta puberum. C. ſi aduer. vend. in l.* [illegible] *cap. quamuis de pac. lib. 6.* Dec. *in conſ. 180. & in conſ.* [illegible] *181.* & aliis [illegible] Doct. Plane hic arguitur læſio multum [illegible] iuſti precii, ex qua læſione arguitur dolus [illegible] pro reſciſſio actus eſt concedenda, vt in dicto [illegible] nam venditio facta fuit ad menſuram & [illegible] cium pro ſingula tornata, quo caſu tot [illegible], quot ſunt res in venditione deductæ *l. ſi* [illegible] *ff. de* [illegible] *ga.* ſed in illa tornata reperitur læſio exceſſiua [illegible] caſu Doct. magis communiter concludunt [illegible] vltra dimidiam eſt magnus, quod reſcindi[illegible] contractum maioris, & non obſtante iuramento. Corn. *in conſ.* [illegible] *2. colum. pen. in conſ. 14.* [illegible] *col. 2. lib. 3.* nam ex tanta læſione dolus argui videtur, non ſolum re ipſa, ſed ex propoſito, *vt dixi in conſ.* [illegible] *col.* [illegible] *in* [illegible] *Iaſon in conſ. 142. col. 5. in fin. & ſeq. & in conſ. 192. colum. 1.* quod ſolum funda-mentum ſatis per ſe eſſet ad ferendum victoriam. Certe funda-mentis ante memoratis concurrentibus, quæſtio videtur eſſe extra omnem controuerſiam: & ita de iure reſpondendum cen-ſeo, ſub correctione tamen cuiuslibet ſanum conſ[illegible] [illegible] cini, Auguſt. 1534. Aymo Crauetta ex Sauiliano. I. V. D.

SVMMARIA.

1 *Donatio eſt nulla ſi per eam auferatur libera facultas teſtandi.*
2 *Teſtator non poteſt de vſufructu diſponere cum* [illegible]*.*
3 *Vbi aliquid reſeruatur de quo donator teſtari po*[illegible]*.*
4 *Vbi ſim*[illegible] *reſeruatur vſusfructus, poteſt donator teſtari de fructibus re-ſeruatis.*
5 *Quam*[illegible] *durat vſusfructus, & donator vtitur fructibus ad eum pertinent, & poteſt de eis diſponere.*
6 *Donator* [illegible] *fructum cogitauit donationem* [illegible]
7 *Reſeruatio* [illegible]
8 *Ve*[illegible] *tempo*[illegible]*, etiam in adeo ſi* [illegible] *actus cernat.*
9 *Verbum vſusfructus capitur pro fructibus, quando alias diſpoſitio non va-leret.*
10 *Donatio cum reſeruatione vſusfructus quando valeat.*
11 *Donatio vitiatur quando ſit reſeruatio vſusfructus* [illegible] *tra Decium.*

Excitare Lector ad materiam pulcherrimam: an donatio vniuerſalis conſtet in ſola vſusfructus reſeruatione quam ſane difficultatem haud alibi ita clare explicatam offenderis.

CONSILIVM CCXXII.

An donatio vniuerſalis conſtet in ſola vſusfructus reſer-uatione.

DIVINO ſubſidio ex corde poſtulato. Viſo inſtrumento donationis Georgii Mollinerii de Gabutto collatæ in eius fratres conſanguineos. Rurſus accepta narratione facti de mente

maius

matris donatoris ab inteſtato, relicto ipſo Geo [illegible] donatore v-
nico filio. Dubitatur an bene [illegible] donationis pertineat
ad donatarios vt illius donationis in qua donantur etiam bo-
na & iura futura. ¶ Videretur reſpondendum quod non: quia
1 illa † donatio omnium bonorum præſentium & futurorum vi-
detur nulla per quam aufertur libera facultas teſtandi, *l. ſtipula-*
tio hoc modo concepta. vbi [illegible] *ff. de verb. oblig. & in l. fin. C. de pact.*
2 Nec † videtur obſtare [illegible] vſusfructus, quia de eo diſpo-
nere donator non poteſt teſtando, cum morte eius finiatur *§.*
finitur [illegible] *de vſufr.* [illegible] & [illegible] et tempore mortis donatoris ſuper-
eſſent aliqui fructus, nihilo magis de eis teſtari donator poterit
tanquam includatur ſub donatione tam generali: ita Paul. de
Caſtr. *in d. l. fin. colu. pen. C. de* [illegible] *& in conſil.* [illegible] *Notandum eſt præfatum*
[illegible] *colu. 2. verſi. ſed quantum ad commodum fructuum lib. 2.* & licet
Alex. & Iaſ. teneat contra Paul. *in d. l. ſtipulatio hoc modo concepta.* ta-
men ad eorum rationes reſpondet Dec. *in d. l. fin. colum. pen. verſic.*
[illegible] *C. de pact. in conſ. 10 & in conſ. 251.* Paul. etiam opin. probat &
ſequitur Corn. *in conſ.* [illegible] *ad fin. lib. 1. & in conſ.* [illegible] *colum.*
2. lib. [illegible] Curtius *in conſ.* [illegible] vbi pro hac opin. allegat Bart.
in conſ. [illegible] eandem opin. defendit Ripa *lib. 3.*
reſpon. [illegible] *de donat. reuoc.* [illegible] ¶ Sed præmiſſis non obſtantibus, con-
trariam opi. arbitror de iure veriorem, quod imo valeat dona-
tio & [illegible] ficiat reſeruatio vſusfructus. & in primis hanc opin. ſi
bene conſideretur, tenet Bar. *in d. con. 76 col.* [illegible] nam ideo con-
ſuluit donationem non valere, quia donator non ſimpliciter
[illegible] auerat ſibi vſumfructum, ſed cum ea qualitate vt de eo
poſſet in vita diſponere, quæ reſeruatio in [illegible] tollit diſpoſitio-
[illegible] morte ob id aufert liberam te [illegible] di facultatem: vult er-
go Bar. [illegible] valificiat reſeruatio vſusfructus modo reſeruans
non [illegible] diſponat in vita tantum: & ſic patet quod
Bar. [illegible] allegat pro ſe, potius facit contra eum. Eandem
opi. [illegible] donatio, tenet Aret. *in conſil. 54 colum. pen.* idem
ſentit Abb. *in conſ. 102 col. 2. verſ.* [illegible] *tamen hæc quæſtio lib. 1.* Idem vo-
lunt Alex. & Iaſ. ſupra allegati pro hac parte. Idem voluit Soci.
ſi bene ponderetur *in conſ. 126 colum. penul. verſ. vltimo loco dico lib. 1.*
dum voluit vitiari donationem, quia reſeruans vſumfructum
dixerat quod poſſet de eo in vita diſponere, ſecus ſentiens ſi do-
nator ad vitam ſe non reſtrinxeſſet. idem tenet Alex. *in conſ.* [illegible]
[illegible] *lib. 4.* Bellamera *in conſ.* [illegible] *colum. 2. verſ.*
8 [illegible] *& in fine conſ.* Eandem opin. quod [illegible] ſit donatio in
ſola reſeruatione vſusfructus, tenet Iaſ. *in conſil. 21 col.* [illegible]
[illegible] *colum. 2.* [illegible] *lib. 3 &* [illegible] *colum. 6*
[illegible] *lib. 4* [illegible] *colum 2.* [illegible]
[illegible] *matrim.* [illegible] opin. videtur amplecti [illegible] In fructus
non ſint tenues, ita [illegible] ſuperſit de
quo donator teſtari poſſit, prout ita [illegible] tenet Boerius
in deciſ. Burdegalen. [illegible] *colum.* [illegible] ¶ Et
quia [illegible] Doctor. [illegible] ationes, mihi
videtur [illegible] opin. [illegible]
3 Dicit [illegible] materia [illegible] reſeruatur
4 de [illegible] teſtari po [illegible] dico quod
vbi [illegible] reſeruat [illegible] donator [illegible]
de fru [illegible] reſeruatis [illegible] bonorum [illegible]
tenues. Nec obſtat reſponſio Paul. de C [illegible] quod fructus inclu-
duntur ſub donatione futurorum, quia [illegible] vſusfructus
non eſſet reſeruatus: ſed cum expreſſe fuerit reſeruatus, dico
quod non includuntur, imo verbis expreſſis [illegible] de
5 bonis donatis quamdiu [illegible] durat vſusfructus [illegible] quamdiu
donator, & vſufru [illegible] viuit, fructus ad eum pertinent [illegible]
eis poteſt ad arbitrium diſponere tam [illegible] quam in mor-
te. ſecundum diſtinctionem *l. defuncta ff. de vſufr.* Iam ſi iſta ta-
men Paul. de Caſtr. eſſet vera quod [illegible] fructus includantur
appellatione futurorū, [illegible] quod nec etiam in vita poſ-
ſit donator de fructibus [illegible] ponere [illegible] eadem ratio
incluſionis. ¶ Non obſtat quod aliud eſt reſeruare vſumfru-
ctum [illegible] quia
reſp [illegible] & dico [illegible] eſt non [illegible]
[illegible] non ſequitur [illegible] reſeruans [illegible] fructum
[illegible] de fructibus [illegible] vſusfruct [illegible] de [illegible]
[illegible] modo [illegible] etiam [illegible]
[illegible] fructus tamen [illegible]
[illegible] ſtuarius de [illegible]
bus de [illegible] etiam de [illegible] mor-
[illegible] in [illegible] quod
dona [illegible] ſtuarius bo-
norum donatorum: [illegible] quod vſuf [illegible] fru-
ctus perceptos [illegible] & [illegible] per [illegible]
aliquid [illegible] totum [illegible]
nem eos integro [illegible] de tali [illegible]
ctibus diſpon [illegible] non idem in dona-
tore vſufructuario [illegible] qui a donator fuit [illegible]
nauit, fateor [illegible] vſumfructum,
ergo & fructus [illegible] Poſt [illegible] contr [illegible]
rationem qui [illegible] *l. hereditatis in princ.*
ff. de petit. hered. [illegible] ſtatem, & [illegible]
tineat venire [illegible] *pet.*
heredit. [illegible] enim qui reſeruat [illegible] ctum ſibi [illegible]
petit, cogitat de commodo [illegible]
nomine ſuis, adeo quod [illegible] quoad [illegible]
nēdi de fructibus perceptis [illegible] vſumfru-
ctus, cum [illegible] petere [illegible]
neant. ¶ Secundo [illegible] Paul. [illegible]
lunt quod [illegible] donator reſeruaſſet ſibi fructus. [illegible]
ſed dico quod † donator reſeruans vſumfructum [illegible]
nationem validam facere de donatario etiam non [illegible]
dum quilibet enim diſponens cenſetur velle facere actum va-
lidum & efficacem *l. ſi præter* [illegible] *ff. de* [illegible] *l. 3. ff. de* [illegible]
quoties ff. de rebus dub. [illegible] *Abba. de verb. ſignif.* Modo arguo ſic, [illegible]
lud [illegible] donator & donatarius vt actus donationis [illegible]
validus, ſi illa donatio valida eſſe non poterat, niſi fructus eſſent
reſeruati, dico quod † reſeruatio [illegible] fructus intelligitur [illegible] pro
reſeruatione fructuum [illegible] exponendo vſumfructum pro [illegible]
ctibus quia vt actus valeat, verba impropriantur [illegible]
[illegible] *de religio. domi.* [illegible] Bar. [illegible]
[illegible] *in princip. de præbend.* Socin. *in l. 2. column. 8. verſic.* [illegible]
[illegible] *de vulgari.* Dec. *in rubr. extra. de probat. colum. 2. in fin.* [illegible]
telligenda verba largiſſimo modo & omni meliori [illegible] quo
fieri poteſt vt actus valeat. Abbas *in con.* [illegible] *63 colum. 6.* [illegible] ¶ [illegible]
plus impropriari verba debent etiam in odioſis & [illegible]
ſunt ſtricti iuris ne actus corruat *l.* [illegible] *ſtipulatus fuero per te ff. de verbor.*
obligat. c. ſi ſententia. de ſenten. excom. li. 6. quæ iura ad hoc pro-
tum adducit Abb. *in conſil. 86 colum. 2 lib. 2.* ¶ Ad [illegible]
in l. ex facto. § fin. ff. ad Trebellian. vbi conditio adiecta fideicommiſ-
ſo ſi filius deceſſerit ſine herede, intelligitur, id eſt, ſine deſcen-
dente, quia alias fideicommiſſum eſſet inutile, cum [illegible] dece-
dat quis ſine herede accipiendo verbum herede proprie & ſic
vt ſuſtineatur fideicommiſſum, verbum heres impropriatur
& reſtringitur ad deſcendentem. Similiter ſi pater [illegible]
granatur pure & ſimpliciter de reſtituendo filio, quum [illegible]
teſtator, peruenire bona ad filium ipſius inſtituti, cenſetur [illegible]
ctū fideicōmiſſum in caſum quo filius erit ſuus [illegible]
commiſſum ſit purum, quia alias ineffica x eſſet fideicō [illegible]
l. fideicommiſſa [illegible] *ff. de leg. 3.* [illegible] *ff. de Treb.* & cum fi-
deicommiſſum [illegible] onus & odium. *l. coheredi. §. cum* [illegible] *ff. de*
vulga. ideo in dubio fit interpretatio contra fideicommiſſum
Rom. *in l. à Titio ff. de verb. oblig.* Socin. *in conſ. 113 col. pen.* [illegible]
[illegible] *lib.* [illegible] Dec. *in conſ.* [illegible] *6. ad fin. in conſil. 465 colum.* [illegible]
med. & in conſil. 593. ad fin. ſi verba impropriantur in materia one-
roſa & odioſa vt actus valeat, quid dicemus in donatione, quæ
dicitur fauorabilis [illegible] liberalitatis [illegible] *cum de* [illegible] *dona.* ¶ [illegible]
magis in terminis adduco Bald. *in con.* [illegible] *125.* [illegible]
lib. 1 in l. 1. C. ſi [illegible] *& in l. rem quam. C. de iure dom.* vbi
ſi vſufructuarius cedit alii vſumfructum, intelligitur ceſſi-
[illegible] fructus, & [illegible] fructus [illegible] ceſſio-
ne alias cadat [illegible] accipiēdo vſumfru [illegible] prop [illegible]
volunt Ang. *in l.* [illegible] *ff. ſol. matrim.* Curtius [illegible] *in conſ.* [illegible] *colum.*
penult. & ite [illegible] terminis habent [illegible] deciſionem expreſſam quod
ver [illegible] † vſusfru [illegible] capitur pro fructibus, quando alia [illegible]
poſitio non valeret. ¶ Idem videmus in ſententia, [illegible]
[illegible] verba [illegible] impropriantur in ca [illegible]
l. & puto. §. [illegible] *familiar.* [illegible] quam [illegible] in dicit Bald. [illegible]
[illegible] *cum quidam Lanfrancio.* [illegible] *lib. 10.* [illegible]
conſ. 122. poſt med. Socin. *in l. quoties.* [illegible] *de reb. dubiis.* [illegible]
mus in principe, qui [illegible] in dubio non præſumatur [illegible]
dine poteſtat [illegible] Bald. *in l. bonorum po* [illegible] *C. qui a* [illegible]
in conſil. 317. [illegible] *colum. 2.* [illegible]
conſi. vlt. colum. [illegible] *poſt med.* iſtud [illegible] quando [illegible]
nitudine poteſtatis [illegible] non valeret Paul. de C [illegible]
perfect. [illegible] *quamquam. C.* [illegible] Pa-
de Caſtr. *in conſil.* [illegible] *in facto præſenti colum.* [illegible] *med. lib.* [illegible]
in [illegible]

in teſtamento colum. 6. C. de teſta. milit. in c. quomodo Abb. col. 5. de offic. deleg. & in conſ. 11. colum. penult. poſt med. & tamen plenitudo poteſtatis dicitur res odioſa. Rota *deciſ. 331. Suppoſito facto. colum. 2. verſ. modo hic videntur in nouis* Curt. ſenior. *in conſ. 9. colum. pen. circa fin.* vbi tamen Curt. Rotæ non meminit. Ex quibus apparet iſtam opin. eſſe de iure & æquitate veriorem, contraria vero opinio fundatur in quadam ſubtilitate potius quam fundamentorum efficacia.
10 Concludo † ex præmiſſis quod aut reſeruatur vſusfructus de quo poſſit donator in vita diſponere, & non valet donatio: aut reſeruatur ſimpliciter vſusfructus alio non adiecto, & valet donatio, aut reſeruatur vſusfructus de quo poſſit donator teſtari, & ſimiliter valet donatio: aut fit reſeruatio vſusfructus, de quo poſſit donator diſponere tam in vita quam in morte: & hoc caſu Dec. *in d. conſ. 251.* tenet donationem non valere, quia cum voluerit donator poſſe diſponere in vita, auferri poteſt libera facultas teſtandi. Mihi videtur ſaluo ſaniori iudicio donationem valere. Pone enim quod donator reſeruet vſumfructũ de quo teſtari poſſit, hoc caſu non inficiatur Deci. nec inficiari poteſt quin donatio valeat, & tamen nonne poterit donator de fructibus reſeruatis in vita diſponere, & ſic auferre ſibi facultatem teſtandi: igitur adiciendo illa verba de quo poſſit diſponere tam in vita quam in morte, illud expreſſit quod tacite inerat, ergo expreſſio vitiare non debet *l. non recte. C. de fideiuſſ.* & poſito, ad illud fundamentũ reſponderi poſſet quod permiſſa diſpoſitione in vltima voluntate non cenſeatur permiſſa in vita. Ex alio dico opinionem Decii poſſe procedere, nam Deci. vult donationem non valere, quia auferri poſſet facultas teſtandi, ſed dico quod Doct. in hac materia hoc non conſiderant an auferri poſſit, ſed an tollatur aut auferatur, patet, quia alias donatio omnium bonorum præſentium tantum non valeret, quia per eam auferri poſſit facultas teſtandi ſi quis in futurũ non acquireret, & ſic fateor quod tolli poſſet facultas teſtandi ex tali reſeruatione, ſed hoc non conſideratur. Satis enim eſt, quod non tollatur dum donator nõ reſtrinxit ſe ad diſpoſitionem in vita;
11 cum etiam in morte poſſet diſponere. Præterea † contra Deci. faciunt Doct. ſupra alleg. volentes vitiari donationem quando fit reſeruatio vſusfructus de quo poſſit donator in vita diſponere, ratio eſt ſecundũ eos: quia donator reſtrinxit ſe ad diſponendum in vita tantum, & ſic facultatem ſibi abſtulit diſponendi in morte, volunt ergo clare memorati patres quod ſi donator nõ reſtringat ſe ad diſponendum in vita, valeat donatio, ſed in caſu Decii quando fit reſeruatio vſusfructus ad diſponẽdum in vita & in morte, donator non reſtringit ſe ad diſponendum in vita quo minus in morte poſſit diſponere, ergo valebit donatio. ¶ Poſtremo, vbi res dubia eſſet quã puto clariſſimam, in dubio fieri debet interpretatio, quod valeat donatio per ea quæ ſupra diximus. Quæ interpretatio vt actus valeat fit etiam in pœnalibus. Bar. *in l. 1. § exercitum ff. de cuſt.* Soci. *in l. cum ſenatus colum. 2. in prin. ff. de reb. dubiis.* & dicitur interpretatio benigna per quam actus validatur *l. cum in teſtamento ambigue* & ibi Soci. *in 2. no. ff. de rebus dub.* & dicit Paul. de Caſt. *in conſ. 119 dubia, in quibus quæritur. colum. 1. in fin. lib. 1.* quod illa opinio benignior dicitur & tenenda eſt per quam ius conſeruatur. ¶ Non omitto etiam quod Ripa *in d. reſponſo 24. colum. 4.* aït ſe non inficiari quin hæſitet ſuper hoc dicto Decii, licet Curt. iunior Decium ſimpliciter ſequatur *in d. conſ. 25. colum. 3. & in conſ. 120. colum. 2. ad fin. verſic. præterea ad im̃pugnationem.* Sed hoc poſito quod dicta donatio teneat, dico tamen donatarios nõ poſſe iuuari hac donatione in rebus petitis, quia nõ probauerunt quod iſta bona acquiſita vnquam fuerint donatoris, cum nõ appareat filium donatorem adiuiſſe hereditatem matris, & hereditas antequam adeatur dicitur in bonis noſtris. Bartol. *in l. ſi ex re. § fin. ff. de ſtip. ſer. & in l. heres. de acquirend. hered.* ¶ Nec obſtat quod hereditas matris non adita tranſmittatur beneficio *l. vnic. C. de his qui ante aper. tab.* quia illa tranſmiſſio nõ fit niſi in deſcendentes tranſmittentis: ita loquitur *d. l. vn.* Bal. *in conſ. 204. Viſo themate lib. 5.* Socin. *in conſ. 116. non poteſt negari. colum. 4. verſ. ad ſecundum etiam lib. 1.* Corn. *in conſ. 146. colum. 1. lib. 1. in conſ. 42. colum. penult. 5. dubio. in conſ. 215. colum. 1. lib. 3. in conſ. 312. in princ. & in conſ. 314. colum. pen. ad fin. lib. 4.* Sed iſti donatarii non ſunt de deſcendentibus donatoris, igitur ad eos tranſmiſſio facta non eſt. ¶ Reperio tamen Veronenſem *in conſ. 50. in 3. dubio.* vbi limitat hanc concluſionem non procedere in infante, qui hereditatem matris tranſmittit etiam in non deſcendentes, quia eam tranſmittit vt aditam, *per l. ſi infanti. Cod. de iure deliber.* ſed nos ſumus extra hanc difficultatem, quia donator infans nõ erat, & in infante fruſtra tractatur de donatione. Thaurini, 11. Septembris, 1534. Aymo Crauetta à Sauiliano. I.V.D.

SVMMARIA.

1 *Diſcuſſio bonorum poteſt quandocunque fieri lite pendente citra nouam inſtantiam.*
2 *Impleta diſcuſſione nec facta petitione noua, ſed continuata prima non eſt noua inſtantia.*
3 *Petitio eſt fundamentum iudicii, ſine qua acta ſtare non poſſunt, & ſententia fieri non permittitur.*
4 *Diſcuſſio ſit ſecundum naturam petitionis facta.*
5 *Negocio principali ſuſpenſo, non dicitur noua inſtantia quando habita eſt reditio ad negocium principale.*
6 *Renouata conſtitutio, vtrum ſit noua.*
7 *Exceptio diſcuſſionis ante litem conteſtatam omiſſa reddit proceſſum nullũ, ſi procedatur ad vlteriora citra cognitionem ipſius diſcuſſionis.*
8 *Pluralitas actuum in dubio non eſt præſumenda.*
9 *Natura noua iudicii non eſt præteritum iudicium perficere, quia alias nouum dici non poſſet.*
10 *Iudicii principalis ratio habenda eſt, & non eius quod acceſſorie venit.*
11 *Nouum quid non dicitur quando illud quod erat in habitu deducitur ad actum.*
12 *Res noua non dicitur quando ſolum alterantur accidentia ipſius rei, forma ſubſtantiali remanente.*
13 *Quæ pertinent ad perfectionem inchoatorum non faciunt rem nouam aut nouum negocium.*
14 *Vbi res dubia eſt, iudicandum eſt alterum nolle nouum actum facere, ſed actum inchoatum confirmare.*

CONSILIVM CCXXIII.

Contra Alexandrum Laueratum.

DIVINO ſubſidio ex corde poſtulato. Ego calculorum inſtantiarum ſum plane rudis, ceterum in facto narratur, quod ſi vna tantum probetur inſtantia aduerſus Alex. Lauerati, illa dicitur perempta, culpa partis: videamus igitur duæ ne, an vna tantum arguatur inſtantia, nam fieri poteſt vt inchoato vno iudicio aliud inchoetur ſeparatim, à priore, ſaltem parte nõ opponente, *iuxta no. in l. nulli. C. de iud.* & quidem concludendum videtur vnam tantum eſſe iuſtitiam ſequentibus fundamentis. ¶ Principio omnis probatio ex neceſſitate debet concludere. *leg. non hoc C. vnde cognat. ca. in præſentia. de proba.* ſane nulla neceſſitas cogit vt duas inſtantias fateantur aduerſus Alexandrum Lauerati, ex eo quod pendente iudicio tentata fuerit diſcuſſio bonorum, † nam ea fieri poteſt quandocunque lite pendente citra 1
nouam inſtantiam Rom. *in conſ. 387.* Ang. *in l. decem ff. de verb. obliga.* Alex. *in l. exitus. ff. de acquir. poſſ. & in conſ. 114. ad fin. lib. 5.* Cot. *in conſ. 85. col. fin. lib. 4.* Dec. *in l. fin. in prin. col. 4. ad fin. ff. ſi cert. pet.* Iaſ. *in § item ſi quis. colum. 15. Inſtit. de actio.* ¶ Secundo arguitur, ex forma decreti principalis, inſtantia incipit à petitione, ſed contra † Alexandrum impleta diſcuſſione, nulla eſt facta noua petitio, ſed continuata 2
prima, ergo ſine noua petitione non erit noua inſtantia: nam conſequens dari non poteſt, vbi nullum eſt antecedens. *l. ſed & ha. § præter. ff. de procur. l. ſi homo mortuum.* vbi Iaſ. *ff. de verb. oblig. apud antiquos cum ibi not. Cod. de furtis. cap. cum ex officii. de præſcrip.* & inde fit conſequens non conceſſo antecedenti. *l. ad lega. & l. ad rem mobilem ff. de procur.* conſiderandum eſt igitur initium ipſius inſtantiæ à † petitione facta, tanquam fundamentum iudicii, ſine quo acta ſtare non poſſunt *l. nam orig. ff. quod vi aut clam l. egi. ff. de except. rei iud. & l. hactenus in fin. cum l. ſeq. ff. de aqua pluu. arc. cap. cum Paul. 1. qu. 1.* 3
Ideo ſententia lata ſine inſtantia dicitur nulla, *text. & not. in l. properandum in princ. C. de iud.* etenim ſi dicamus cenſeri continuatam primam petitionem, iudicium fieret eluſorium, quia ſine petitione, ſententia fieri nõ poſſet *auth. offeratur. C. de litis conteſtat.* imo
etiam in cauſis ſummariis in quibus proceditur ſola facti veritate inſpecta, requiritur aliqualis petitio, *vt in cle. ſæpe. de verbor. ſignif.* Itaq; petitione aliqua non propoſita, dicendum eſt petitionem primam continuatam, ne iudicium eluſorium fiat *cap. commiſſa. § porro. de elect. lib. 6. l. ſi prætor. ff. de iud. l. fi. ff. ne quid in loco pub. l. 1. § exceptiones. ff. quar. re. act. non da. & leg. fin. Cod. de vſur. rei iud.* & in dubio actus præſumi debet potius continuatus quam alius de nouo factus, quia nouum factum non præſumitur niſi probetur. *l. in bello. § facta. ff. de capti. l. 1. Cod. de probatio. c. cum in iure. de offic. deleg.* nec præſumitur mutatio voluntatis quod voluerit quis mutare primam petitionem *cap. maioris. § fin. vbi glo. in verſ. perdurare. de bapt. cap. licet. de procur. libr. 6. l. cum qui mutatam. ff. de probatio. l. Lucius. 1. ff. de leg. 2.* nec præſumitur quis velle in continenti ſe corrigere, *l. ſi ad ea ff. de condic. & demonſtrat.* & in ſpecie quod actus præſumatur continuatus potius quam de nouo factus, eſt text. *in l. ſi pluribus. verſ. quod ſi vna. ff. de verbor. obligat.* quem text. ad hoc propoſitum

[illegible] allegat Bal. *in conſil.* 17 *Denotatus* [illegible] *colum.* [illegible] *circa med.* [illegible] [illegible] ſtra Bald. [illegible] quod [illegible] præiu [illegible] nouatio actus niſi expreſſe agatur *l. cum huiuſm* [illegible] *ac verò* [illegible] *C. de nouat.* Ideo in dubio n[illegible] dicendum [illegible] tam tutè in [illegible] nuam: quod maxime obtinet, quia natura petitionis propoſitæ ſuadebat quod excuſſio bono vtiliter fieret, ideo illa excuſſio cenſetur facta ad confirmandam ipſam petitionem, non vt ab ea recederetur, quia à primordio tituli poſtea [illegible] formatur euentus. *l. 1. in fin. C. de imp. lucrat. d. tit. lib.* 10. & diſcuſſio [illegible] acta cenſeri debet † ſecundum na-
4 turam petitionis [illegible] non [illegible] aliam petitionem. *l. ſi rem. in prin. ff. locat.* [illegible] *talis peruenit. ff. ſi cert. pet. cum ſimil.* Igitur [illegible] tione continuat [illegible] vnica tantum dicitur inſtantia, non duplex *gl. ff. in l.* [illegible] *de ad. & obligat. & l. vul. in princip. ff. de furt.* Bald. *in conſ.* 48 *Super veritate lib.* 3. *& in conſil.* 301 *Locatio. in fin.*
5 *lib.* 5 Corn. *in conſil.* [illegible] *lib.* 3. ¶ Tertio, licet † cognitio negocii principalis fuerit ſuſpenſa ob diſcuſſionem & prorogata donec [illegible] tur, non propterea dicitur noua inſtantia quando habita eſt redditio aut reuerſio ad negocium principale quoad [illegible] iam. [illegible] ex Innoc. *in c. cum inter de conſuet.* Angel. *in l. quis* [illegible] *§. arcem ff. de* [illegible] *atio* vbi ſuſpenſo interdicto, non dicitur ferri noua [illegible] entia interdicti [illegible] d continuari. not. Cano. *in c. ad hæc. el. t.* [illegible] *colum. fin. verſicul.* 3 *concluſio. de appell. & in conſil.* 34 Paul. de [illegible] *conſil.* 389. *lib.* 1. *ſecundum impreſſionem nouiſſimam.* ¶ Quar[illegible] de nouo inchoare iudicium, aliud reuocare, faciendo [illegible] ſic dicimus aliud eſt tacere, aliud reficere, & ſtatutū [illegible] faciente non pertinet ad reficientem. *l.* 1 *§. ſi quis adificiu* [illegible] *ff. de ope. no. nun.* Dec. *in reg. dominum ff. de reg. iur.* ergo [illegible] diſcuſſionem in totum non renouetur iudicium, ſed [illegible] ppleatur quod deeſſe videbatur, poteſt conſiderari [illegible] ſeu noua inſtantia. † Ideo quando vetus [illegible] enouatur etiam aliquo addito non dicitur noua [illegible] ſed antiqua. *c. præceptu.* [illegible] *diſt. c. Acatius* 24. *qu.* 1 quæ iura [illegible] Anch. *in conſ.* 54 *col.* 2. *verſ. poſtremo expreſſum eſt* [illegible] iſta diſcuſſio quæ acceſſit, non dicitur quid nouum ſeu [illegible] iudicio intentato, ſed vnum extremum neceſſarium [illegible] ab initio prætermiſſum & omiſſum, poſt autem fuit adimpletum quæ Iaſ. ſcribit *in l. in* [illegible] *colum.* 3 *ff. de* [illegible]. Et illud quod dicitur fieri nouum ius ex additione [illegible] nachione, demum intelligitur quoties ex tali additione [illegible] tractione, inducitur alteratio aliqua negocii, ſeu diſpo[illegible] Curt. *in conſ.* 38 *colum.* 5. *verſu. & Angel. lib.* 4. ſed per iſtam [illegible] onem nihil alteratur iudicium inchoatum, ergo, &c. [illegible] iſta excuſſio pendente iudicio non fit propter ſe ſed [illegible] iudicium intentatum, vt illud valeat: nam vbi opponitur exceptio diſcuſſionis ante lit. conteſt. eius omiſſio reddit [illegible] ſum nullum ſi procedatur ad vlteriora citra cognitio[illegible] ipſius diſcuſſionis. Bar. & Doctor. *in l. fin in fin. princip. ff. ſi cert. per* Alex. *in conſil.* 32. *circa prin. lib.* 4. ſed quando vnum fit propter alterum dicitur vnus & idem actus, non diuerſus Bald. *in l.* [illegible] *circa fin. C. de* [illegible] *per tex. in l. illud §* [illegible] *ff. ad leg. Aquil.* [illegible] propterea Bal. ad ſtatutum quod ſoluatur gabella de quolibet contractu, vt ſolui non debeat de contractu qui fit propter alterum, cum dicatur vnus tantum & idem contractus: tradit idem Bald. *in conſ.* 440 *Secundum ea. colum.* 2 *lib.* 5. Itaque iudicium excuſſionis dicendum eſt vnum & idem iudicium cum ipſo iudicio principali, maxime iam intentato, cum habeatur excuſſio propter ipſum iudicium principale ¶ Sexto arguitur, non præſumitur quis quid velle quod damno futurum ſit *arg. l. ſi procur. ff. de condict. indeb. cum ibi not.* alibi dicit Dec. *in conſ.* [illegible] *colum.* 3. *poſt med.* non debere nos dicere glo. illud voluiſſe per quod male eſſet locuta. Alibi dicit Angel. *in l. ſi quis ſub condit. ff. de condit. inſtit.* quod generalis diſpoſitio non comprehendit illud quod eſſet inconueniens. facit quod dicimus in generali diſpoſitione non venire odioſa. *l. Lucius. §. Lucius Titius* vbi Bald. poſt Dy. *ff. de leg.* 2 modo intelligere quod poſt diſcuſſionem volueris agens inchoare nouam inſtantiam, hoc eſſet inconueniens & in eius diſpendium pertineret, quia eſſet condemnandus ad expenſas ante factas, tanquam renuncians prioribus actis, *iuxta not. in l. poſtquam lite. C. de pactis.* facit Bartol. *in l.* [illegible] *C. de agric. & cenſ. lib.* 11. poſſent etiam peti expenſæ ratione temeritatis & tardati proceſſus. *per l. eum quem temere. ff. de iud. & l. non ignoret. C. de fruct. & lit. expenſ.* conſideraretur etiam damnum, quia acta ante geſta non legerentur reproducta in noua inſtantia, conſequenter non fidem facerent in ſecunda inſtantia, iuxta doct. Barto. *in l. non tantum ff. de procur.* Iam ſi in generali diſpoſitione non venit quod poſſit quis lædere ius alterius *l.* 2 *§. merito & §. ſi quis à principe* [illegible] *quid in loco pub.* Bartol. *in l. totus ff. de pollici. & l.* [illegible] *ord. fac.* multo minus cenſendus eſt quis voluiſſe [illegible] ctum generalem præiudicium [illegible] *arg. l. præſens C. de ſerui. & c.* [illegible] *cum de indebito ff. de probatio.* ¶ Septimo facit quod plur[illegible] 8
ctus in dubio non eſt præſumenda, vt not. *in l. ter. & in l. ſecundum.* vbi Iaſ. *ad fin. de verb. oblig.* Alex. *in l. plane §. ſi cad.* [illegible] *ff. de leg.* 1 [illegible] *in c. ſuper præſentia. in* 9 *not. de proba. & in conſil.* 140 *colum.* 5. *& ali.* [illegible] itaque non eſt veriſimile quod voluerit agens plures inſtantias eaeque contra vnam perſonam, & in eius damnum ¶ [illegible]
natura † noui iudicii non eſt præteritum iudicium per[illegible] 9
quia alias nouum dici non poſſet: ſicut dicimus quando princeps reſpondet ad conſultationem alicuius, ex tali reſponſione non inducitur nouum ius, quia natura iuris noui non eſt [illegible] cundum illud decidantur præterita negocia, ſed ad futura [illegible] hatur. *glo. in c. fin. in verſu. reſpondemus de verb. ſignif.* Corn. *in conſil.* [illegible] *col.* 4 *lib.* 3. Igitur cum hic fiat eadem proſecutio eiuſdem [illegible] nec aliud diuerſum petatur, ſed in eo quod iam inchoatū fuerat, perſeueretur, non video quomodo nouum iudicium dici poſſit. ¶ Nono, attenta hac dubitatione Iudicis, ſequeretur falſam eſſe communem Doct. concluſionem quod pendente iudicio diſcuſſio fieri poſſit, nam ſi dicamus nouum iudicium ex eo quod poſtea diſcuſſio fiat, non dicetur fieri pendente iudicio, ſed ab initio & primordio alterius iudicii de nouo in[illegible] ti, ergo cum diſcuſſio fieri poſſit iudicio pendente, intelligitur de eodem iudicio & ipſo durāte. *l. ſed ſi manente ff. de precario.* ¶ Neque mutat quod reſpectu curatoris ſit noua inſtantia, quia perſona curatoris qui conuenitur, nihil commune habet cum ipſo Alex. *l. fin. ff. de calum. l. naturaliter. §. nihil commune. ff. de acquirit. poſſ.* neque cauſa curatoris trahit ad ſe cauſam Alex. diuiduam & ſeparatam, imo cauſa contra curatorem datum bonis debitoris fuit inſtituta pro excuſſione facienda reſpectu alterius cauſæ iam intentatæ contra Alexandrum: ideo in perſona Alexandri iſta non dicitur noua inſtantia: & cum cauſa fuerit inſtituta contra curatorē ad finē proſequendi iudicii primo inchoati [illegible] diſcuſſio erat neceſſaria, finis ipſe debet conſiderari, non cauſa ad finem ordinata, & per quam ad finem ipſum peruenitur. *arg. l. & ſi non ſint. § peruenіamus ff. de auro & arg. leg.* & quia ordinata ad aliquem finem, debent regulari ſecūdum naturam ipſius finis, Bal. *in conſ.* [illegible] 5. *Verba dicunt. col.* 2. [illegible] *per tex. in leg. oratio ff. de ſpon.* Ruſſus iſta cauſa contra curatorem non dicitur iudicium principaliter & per ſe, ſed venit incidenter & acceſſione ad iudiciū principale ad illud iuuandum & validandum, ob id † iudicii ipſius principalis ratio habenda eſt, non eius quod acceſſorie venit *§ ſi quis alienam Inſtit. de rer. diuiſ.* & quod dicimus clauſulam acceſſoriam quæ venit ad actus executionem, non immutare naturā diſpoſitionis principalis. *clem.: in prin. de preb.* & in terminis de eo quod venit ad executionem alterius, quod non dicatur nouus aut diuerſus actus, ſed idem cum primo ¶ adduco tex. *in l. ſi heres. ff. de ait. empt.* vbi ſi heres vendit rem ex mandato teſtatoris, dicitur haberi res à teſtatore, non ab herede, quia heres mandatum teſtatoris tantum exequitur. Tradit Bal. *in l. cum per* [illegible] *C. ſi quis alteri vel ſibi.* Anch. *in conſ.* 54. *colu.* 2. *verſ.* 2. *ratio.* Actus enim attribuitur mandanti, non exequenti. *l. itemque* [illegible] *§. ſi decret ff. quod* [illegible] Bartol. *in l. vnum ex familia. § ſi de Falcid. ff. de leg.* 1. Anch. *in conſ.* 329. *Dubitationem facit. col.* 2. ſimiliter in terminis de eo quod venit aut fit acceſſorie, quod iudicetur vnum & idem cum actu principali, tradit Bald. *in d. l. cum. dotem in fin. C.* [illegible] vbi propterea quod de contractu fideiuſſionis qui fit acceſſorie, non ſoluitur gabella, ſtante ſtatuto quod de quolibet contractu ſoluatur gabella, quia fideiuſſio venit acceſſione ad obligationem perſonalem: ¶ Decimo adduco quod [illegible] glo. pragmatica in proœmio in verbo vniuerſis, vbi quod [illegible] nouum [illegible] quid non dicitur quando illud quod erat in habitu, [illegible] ad actum. *arg. l. ſicut in fin. ff. quod cui.* [illegible] [illegible] glo. pragmat. pr[illegible] hoc eſt text. *in l.* [illegible] *ff. ſi ex noxali cau. ag.* vbi Iaſ. *in* [illegible] *not.* quam tamen l. legit Iaſ. [illegible] iudicium excuſſionis competebat habito in iudicio [illegible] neceſſarium ad eius validitatem, ideo abſurdum eſſet dic[illegible] quod deductio excuſſionis ad [illegible] lum nouam inducat inſtantiam & nouum iudicium ¶ Vndecimo adduco quod ſcribit Cald. *in conſilio* 11 *per totum in tit. de feudis.* vbi quod noua [illegible] non dicitur quando [illegible] tantum ſolum accidentalia [illegible] ma ſubſtantiali remanente puta, ſi F[illegible] poſt [illegible] cedit in feudum infeudat ſub nouis pactis Quid hic [illegible]

vbi nulla habetur alteratio, etiam reſpectu accidentalium, cum actus excuſſionis dicatur de natura iudicij: ideo fideiuſſor renuncians beneficio de fideiuſſoribus, poteſt opponere exceptionem diſcuſſionis, quia dicitur de natura actus. Bart. *in l. 1. C. de conuenien. fiſci debito. libr. 10.* Roman. *in conſ. 24. Spectabilis. column. 2.* ¶ Duodecimo adduco quod Bal. ſcribit *in conſ. 156. Cum dux. lib. 3.*
13 vbi quod ea quæ pertinent ad perfectionem aut conſummationem inchoatorum, non faciunt rem nouam aut nouum negocium, ſed excuſſio quæ fit pendente iudicio, ſit ad perfectionem & conſummationem iudicij inchoati, ergo noua inſtantia
14 conſiderari non poteſt. ¶ Decimutertio & vltimo, vbi res dubia eſſet, quæ ipſa tamen ex præmiſſis ſplendidiſſima facta videtur, in dubio iudicandum eſt ipſum actorem noluiſſe actum nouum facere, ſed potius actum iam inchoatum confirmare: ſicut dicimus quod in dubio non præſumitur lex aliquid de nouo inducere, ſed potius confirmare. Inno. & Anto. *in c. Buccarea. dudum de decimis.* Bald. *in l. bonorum. C. qui admitti.* ſequitur Soci. *in l. 2. col. 1. ff. de vulg.* ¶ Quibus conſequens eſt colligere computandam eſſe inſtantiam contra Alex. à prima petitione, quæ data eſt die 25. Septembr. 1531. quæ iuris rationibus puto conſentire, ſub correctione tamen cuiuſuis eſſicacius conſulentis. Taurini 24. Septemb. Aymo Crauetta à Sauiliano. I. V. D.

S V M M A R I A.

1 *Congregans gentes armatas, vel conſilium ſeditionis habens, tenetur lege Iulia.*
2 *Pœna committentis vim publicam dicitur hodie arbitraria.*
3 *Perſona vilis & inops fuſtigatur in delictis minoribus.*
4 *An ex ſolo conſenſu cum præſentia eiuſdem criminis obligetur.*
5 *Qui dicatur particeps delicti.*
6 *Qui appelletur proditor, vnde materiam latiſſime.*
7 *Vaſallus contraueniens iuramento fidelitatis, non amittet feudum, niſi in caſibus à iure expreſſis: tenetur tamen domino vendicare, quia venerat contra dominum tentatum.*
8 *Aliquando committitur crimen læſæ maieſtatis, tamen agitur de pœna pecuniaria, & quomodo intelligatur.*
9 *Ex ſola ſuſpitione ſeditionis, licet non ſeditioſus ſit, poteſt pœna pecuniaria vel relegatione puniri.*

CONSILIVM CCXXIV.

Pro Magnifico domino Ioan. Iacobo ex Dominis Rippaltæ & Orbazani.

1 DIVINO ſubſidio ex corde poſtulato. Congregans gentes armatas † vel conſilium ſeditionis habens, tenetur lege Iulia, de vi publ. *l. 1. ff. de vi publ.* Bart. *in l. 1. colum. fin. ff. ad leg. Iul. maieſt.* quod procedit etiam ſi ita congregans ad actum alium nullo [illegible], ſatis eſt enim quod peruentum ſit ad actum congregationis, ſecundum Angel. *in d. l. 3. per illum text.* & idem Angel. *in l. raptor. l. 2. §. item. ff. vi bonorum rapt.* quod omne delictum commiſſum facta congregatione hominum, reputatur atrocius. Pœna autem l. Iuliæ de vi publica, eſt deportatio. *§. item lex Iulia de vi. Inſtit. de publ. iudic. l. qui dolo. ad fin. ff. ad leg. Iul. de vi publ.* eſt etiam pœna publicationis omnium bonorum *gloſſ. in d. l. qui dolo. in fin. & glo. in l. 2. C. ad leg. Iul. de vi publ.* Iſta tamen pœna poteſt augeri ſecundum qualitatem facti, quia ſi cum vi accedat raptus mulieris vel nuptæ, pœna irrogatur vltimi ſupplicij. *l. qui cætū. §. fin. ff. eo. tit.* hodie tamen pœna deportationis non eſt in vſu, ſed loco eius ſucceſſit bannimentum. Bartol. *in l. mathematicos. C. de quæſt.* & *dict.* Guido Papæ *quæſt. 422. 425. & quæſt. 437. colum. 3.* ſed Alexand. *in conſ. 55. colu. 2. verſ. verum quia pœna lib. 2.* quod loco deportationis poteſt iudex pro ſuo arbitrio pœnam imponere: ſimiliter pœna publicationis bonorum ſublata eſt per text. *in authen. bona damnatorum. C. de bon. damnat.* Ita in vi publica dicit Guido Papæ *in*
2 *quæſt. 422. 425. & 437. colum. 3.* Ideo † pœna committentis vim publicam dicitur hodie arbitraria. Corn. *in conſ. 175. colum. 3. ad fin. in 4. dubio libr. 3.* vbi quod ſecundum varios caſus pœnæ alterantur. Idem voluit Alexand. *in d. conſ. 55. column. 2. circa med. verſ. verum quia pœna lib. 7.* dum voluit loco pœnæ deportationis, locum eſſe pœnæ arbitrariæ. Plane, vbi in congregatione armatorum damnum infertur, corporalis armatos congregans, tenetur in quadruplū pro damno dato, vel rapina facta per congregatos. *l. in prin. & §. 1. tamdiu §. ſi quis non.* vbi glo. & Doct. *ff. vi bon. rapt. l. quotiens multa. C. ad leg. Iul. de vi.* Alexand. *in conſilio 102. colum. 2. verſ. ſed præmiſſis non obſtantibus. & colum. 4. verſ. 2. reſpondeo lib. 1.* & tenetur talis corporalis pro damno & facto omniū coadunatorum. Bal. *in rubr. extra. quod metus cauſa colum. 3.* ¶ Aduertendum tamen quod vbi pœna remittitur arbitrio iudicis, debet iudex arbitrari ſecundum [illegible] aut conſuetudinem. Ideo ſi delictum eſt tale quod ex circumſtantijs & eius grauitate eſſet pœna mortis de iure vel conſuetudine, poterit iudex arbitrari de pœna mortis, alias ſecus. Alex. *in conſ. 121. col. pen. ad fin. lib.* vult quod vbi pœna committitur arbitrio iudicis, nunquam poſſit iudex arbitrari de pœna mortis *l. ut inquiſitionem in verſ. aliquin. de accuſ.* vbi Imol. & Docto. amplius ſubdit d. Alex. quod imponere non poterit iudex etiam pœnam mutilationis membri. Idem tamen Alex. plenius hoc [illegible] tractat *in conſ. [illegible] colum. pen. & fin. lib. 1.* vbi dicit cum [illegible] eſſe quod iudex poſſit arbitrari de pœna mortis, quando delictum eſt tale quod de iure vel conſuetudine [illegible] imponenda pœna mortis [illegible] Deci. [illegible] *in conſ. [illegible] poſt [illegible] conſtit. in l. [illegible] colum. [illegible]* *[illegible] in conſ. 100. ad fin.* vbi quod pœna [illegible] conſueuit imponi pro tali delicto iudex ſequi [illegible] ſimiliter ſi per ſtatutum conſtituta ſit alia ex qualitate delicti & eius grauitate, ipſe arbitrari poterit etiam ad mortem & hoc modo debet intelligi glo. *in § in ſumma inſtit. de iniur.* De pœna
3 autem fuſtigationis non eſt dubium quod iudex poteſt arbitrari ſi perſona ſit vilis, & maxime ſi laboret inopia. Bal. *in conſ. 445. Circa conſtat venenum colu. 2. poſt me l. lib. 3.* vbi etiam quod poteſt extendi talis pœna ad carcerem temporalem: dicit tamen Bald. quod talis pœna carceris temporalis imponi debet vbi alia imponi non poteſt. Alex. *in conſ. 55. colu. pen. lib. [illegible]* *in l. imperium nu. 211. ff. de iuriſd. omn. iudic.* Ex quibus [illegible] bene dixiſſe Iaſ. *in l. & ſi legib. & l. 2. C. ſi contra ius [illegible]* diſtincte reprobat illam gl. dicens eam reprobari [illegible] *in conſil. 111.* vbi d. Alex. eam [illegible] probat, ſed [illegible] & declarat, nec eſt veriſimile gloſſatorem aliud voluiſſe [illegible] dicto, ita declarantes, quod poſſit iudex pœnam mortis imponere ſi delicti grauitas ipſum hoc non ſuaderet. [illegible] quod vbi ſumus in delicto, cuius pœna eſt arbitraria [illegible] declarata ſit pœna, iudicabitur vt delictum pro quo [illegible] ponenda pœna corporalis ad effectum impediendi ne [illegible] ta. or admittatur. Ita notabiliter dicit Anch. *in conſilio 1[illegible] [illegible] & ſubtiliter.* pro quo facit, quia ad impediendum actum, [illegible] dicamus de caſu dubio & pendenti quod de certo. *l. [illegible] ff. de condict. in deb. l. pœnitentiam quam. ff. ſi cert. pet. l. 1. § ſi pend. [illegible] ff. ad Macedo.* Ideo pendente dubio, an imponenda ſit pœna corporalis vel non: iudicabimus prout de caſu certo quod imponenda ſit pœna corporalis ad effectum impediendi ne procurator admittatur. His ita declarans dico quod iſte Ioan. [illegible] acceſſitus, nō reperitur congregaſſe armatos, neq; conſilium aliquod inijſſe faciendæ turbæ aut ſeditionis, tantum præſens fuit & conſenſit, videndum eſt † an ex ſolo conſenſu cum præſentia, 4
eiuſdem criminis obligetur: mihi videtur mitiori pœna eum affici debere, per deciſio. Salic. *in l. vn. C. de rap. virg.* [illegible] *conſilium col. nu. 1. & ſeq. ff. de leg. Corn. de ſicar. in l. [illegible] colum. 2. [illegible] ſecundam [illegible] impreſſionem. & in l. frater. ff. de parric.* [illegible] quod maxime videtur obtinere, quia alij congregati ſine ipſo omnino curant factum, videtur tamen grauari quia habebat ſclopum, paratus ipſe facinus admittere, quo caſu videtur opem præſtitiſſe iuxta not. per Abb. *in cap. 1. in 3. membro. de offi. deleg.* & ſic tanquam auxiliator videtur puniendus eadem pœna. Bartol. *in l. ſi fur. [illegible] ope. ff. de furt. & in leg. ſi ſeruo §. fin. eod. tit.* Socin. *in conſilio 188. ad [illegible] 2. verſ. confirmatur iſta concluſio lib. 2.* ſed illud obtineret quando maleficium ſuper quo fiebat conuocatio, eſſet impletum. Deci. *in d. cap. 1. colum. 7. in 2. limit.* ſed ad illam deliberationem de faciendo ſi contingeret dominos aliquid tentare contra ſubditos, non videtur præſtitum auxilium ex vſu ſclopi facit [illegible], non eſſe conſiderandum qualitatem quæ in caſu de quo agitur, effectum diſpoſitionis non auget, ideo quando in ſucceſſione feudi concurrunt frater vtrinque coniunctus, & frater conſanguineus tantum ex parte patris, vterque admittitur, quia illud vinculum cognationis, nihil operatur in feudis in quibus agnatio tantum conſideratur. Bald. *in cap. 1. in fin. de grad. ſucceſſ. [illegible]* Crot. *in rep. l. filius famil. § Diui column. 2 [illegible] & col. [illegible] 9 [illegible]* *ff. de leg. 1. & in rep. l. [illegible] column. 2 in 3 [illegible] ff. de leg. 3.* eod. modo non poterit conſiderari auxilium ex geſtatione ſclopi, quæ geſtatio in caſu de quo agebatur, neceſſaria non erat. Iſta poſſet conſiderari ſi poſtea factum ſecutum eſſet, & ipſe interfuiſſet cum ſclopo paratus fuiſſet, ideo credo eſſe locum pœnæ arbitrariæ, per ea quæ ſupra dixi, quia etiam ipſi principales eſſent p[illegible]

endi pœna arbitraria: cum in [illegible] tamen accuſato minus videtur agen [illegible] m ad text. *in* 1. §. *communi-catis* [illegible] conſtitui pœna vnius libræ auri ſingulis [illegible] quia [illegible] non videtur propriè conuitaſſe [illegible] ſuaret facere quod alii
5 [illegible] bene cont [illegible] vt † quis dicatur particeps [illegible] eiuſdem [illegible] vt pari pœna cum aliis puniatur [illegible] et coadunatus fuerit animo ita [illegible] committendi [illegible] Bartol *in l. fin. in prin. ff. de ſi. ar.* Paul. [illegible] 17. *In cauſa incarceratorum. colum.* 3. *ad fin.* [illegible] *& ponderata* [illegible] *lib.* 2. [illegible] *ad fin. lib.* 1. Anch. *in conſilio* 216. Nor Barth. [illegible] *ad fin.* Corn. *in conſilio* 198. *colum. penult. circa med. lib.* 2. Rurſus vt puniatur auxiliator eadem pœna, oportet auxilium eſſe cooperantiam, non ſimplex, ſine quo delictum omnino fuiſſet commiſſum Ioan. Andr. [illegible] *lib.* [illegible]. Ang. *in dict. l. in furti. §. oper. lib. de furtis.* ſequitur Iaſ. *in conſ.* 117. *colum. penult. poſt med. lib.* 1. accuſatus tamen [illegible] ſolum eſt, quod iſte detentus [illegible] fidelitatem domini [illegible] aſſiſtendo tali coniurationi & eam non [illegible] proditor, & egiſſe contra iuramentum [illegible] committitur vltra crimen [illegible], vt pulchre per Ang. *in conſilio*
6 257. *colum.* [illegible] & falſarium cum qui ad [illegible] quando, vel quis eſt [illegible] domin [illegible] tradit Alex. *in conſ.* 13. [illegible] *lib.* 6. [illegible] nam ſi quis [illegible] contra p [illegible] eſt, dicatur hoſtis, & proditor [illegible] Ang. *in leg. athletas. §. calumniator* [illegible] quod committitur con [illegible] fidelitatis, præſtitam: ex quibus appa [illegible] et ad nullum eſſe crimen læſæ maieſtatis: nam licet quoad damnandum memoriam defuncti & auferendum bona filiorum, crimen læſæ maieſtatis tantum committatur contra principem, vt not. Bartol. *in tra. l. qui ſint rebelles. in verb.* [illegible]. Dec. *in conſ.* 410. *colu. fin.* tamen quo ad puniendum ipſum delinquentem, dicitur committi tale crimen etiam contra inferiorem, puta dominum alicuius caſtri, vt pulchre Alex. tradit *in d. conſ.* 14. *colum.* 1. *& ſeq. lib.* 6. Burn. Aſten. *in conſil.* 38. licet de illo conſil. Alex. mentionem non faciat. Barb. *in conſ.* 79. *colum.* 13. *lib.* 4. Guido Papæ *qu.* 564. licet de hoc dubitauerit Alex. *in conſ.* 254. [illegible] Idem de mente Soci. *in conſil.* 22. *col.* 2. *lib.* 1. [illegible] ne decipiaris, Socin. locutus eſt nimium animoſe dum voluit committi crimen læſæ maieſt. quando patria oppugnatur, maxime quando ſuperiorem non recognoſcit, nam contrarium videtur verius, & [illegible] tenuit ipſemet Soc. latiſſime tractans *in conſ.* 175. *lib.* 2. *in conſ.* [illegible] *colum.* 4. [illegible] *lib.* 4. ſequendo Bal. *in conſ.* 58. *col.* [illegible] *fin. & in conſ.* [illegible] 1. Addo Anch. *in conſ.* 288. [illegible] B. *de garrano* [illegible] ex quibus [illegible] ergo Alex. male locutus eſt *in d. conſ.* 13. dum voluit committi [illegible] crimen etiam contra inferiorem à principe, ſed dicendũ eſt quod contra inferiorem à principe & contra rempubl. non recognoſcentem ſuperiorem non committitur tale crimen, quoad omnes eius effectus, vt ſit locus omnibus eius pœnis reſpectu filiorum, cõmittatur tamen quatenus agitur de puniendo ipſos delinquentes, ſecundum notata d. locis & conſ. Bald. & ſequacium pro quo delicto venit imponenda pœna confiſcationis omnium bonorum, vt per Alex. *in d. conſ.* 13. Paul. de Caſt. *in conſil.* 171. *Viſo & ponderato. colum. fin. circa med. lib.* 1. & ſi iſte habuiſſet aliqua iura à dominis directis omnia perdidiſſet ob eiuſmodi proditionem, poſſet etiam dici quod iſte ſubditus interueniens coniurationi contra dominum, puniatur pœna fuſtigationis tanquam rebellis, & aliis pœnis arbitrariis, per ea, quæ ſcribit Bald. *in conſ.* 483. *Magnificus dominus colum.* 2. *poſt med. lib.* 1. nam ſi in caſu Bald. ſubditus recurrens ad ſuperiorem contra dominum cui iurauit fidelitatem ſine cauſa, ita punitur, à fortiori, quando aſſiſtit coniurationi contra ipſum dominum. Non dico [illegible] men quod pro omni contrauentione aduerſus iura [illegible] fidelitatis, amittat quis iura quæ habuit a domino directo: nam † va-
7 ſallus contrauenien iuramento fidelitatis non amittit feudum niſi in caſibus à iure expreſſis *cap.* 1. §. *aliud, quæ fuer. prima cauſ. benef. amitten.* Docto. *in cap.* 1. §. *aliud ſimiliter* [illegible] *tit. cum ſimil.* vt per Alex. *in conſilio* 103. *colum. pen. poſt princ. verſ. nec contra pro omni contrauentione. lib.* [illegible] Neq. ob [illegible] od [illegible] la coniuratio ne [illegible], quia ſola deliberatio [illegible] Alex. *in d. conſ.* 3. *col.* [illegible] quoad ipſum accuſatum [illegible] videtur cõſummatum delictum, quia verum

eſt dicere eum inter [illegible] onibus contra dominum in eius d [illegible] & [illegible] Ctam, quo ca [illegible] iuxt [illegible] Ba[illegible] *trum* [illegible] *de parri* [illegible] mino [illegible] mum tentatum q [illegible] Anc. *in conſil.* *Ex prædict. a factis* [illegible] *ad fin.* [illegible] *quod ſilentium reputatur in* [illegible] ne per R. [illegible] 4. *quid.* [illegible] Soc. [illegible] & ſicut reuelans [illegible] populi [illegible] p [illegible] committit [illegible] §. *calumniator. ff. de iniamib.* [illegible] hunc contra do [illegible] vel populum [illegible] cum e [illegible] *contra ff.* [illegible] Non [illegible] cum pœnæ [illegible] quod proditor [illegible] ſimil [illegible] ex text. *in l.* [illegible] 8
in 2. *col.* vult con [illegible] ſtat in pœnam tantum pe [illegible] dicit non eſſe crimen læſæ maieſtatis [illegible] ſed illud procedit quando committitur [illegible] cium priuati, nos loquimur quando in [illegible] quæ ad eius iuriſdict. & honorem ac [illegible] *in d. l.* 2. ſolum videtur loqui quando vertitur [illegible] tium alicuius priuati, alias conuenerent quæ Alex. [illegible] *ſil.* 13. nam vaſallus fidem iuratam non implens, dicitur [illegible] & rebellis, & venire contra iuratam [illegible] quod diligenter expreſſit. d. Alex. qui [illegible] coniurationem contra dominum [illegible] rum puniri debet etiam cap. licet eſſe [illegible] dem videtur Soc. velle. *in d. conſ.* 275. *colum.* [illegible] Ang. vbi vult pœnã eſſe capit [illegible] læſæ maieſt. propter ſeditionem ¶ Iſtud [illegible] tra iſtum Pitardum qui non [illegible] iurationem, ſed tantum inter [illegible] ter peccauit, primo quia cum vidit fieri [illegible] nos, non debebat præſens adeſſe, [illegible] verbis declarauit in ſua reſponſione. ¶ Sc [illegible] dominos [illegible] cum poſſet probare. D [illegible] coniuratorib. accedend [illegible] ſent [illegible] contra dominos. Ideo vltra pu[illegible] non [illegible] punietur caſtigatione aliqua corp[illegible] pue ad terrorem aliorum, vt ne [illegible] euenient temp [illegible] coniurationes ab aliis tententur. Sed tamen qual. [illegible] rum à iudice ſunt animaduertendæ prius quã venia [illegible] tam pœnam, maxime quando agitur contra multitudin. [illegible] hic. Cõſiderandum eſt etiam an per [illegible] actum ſit: nam tunc etiam publicationi bon[illegible] detur. *l. capitalium §. ſolet. ff. de pœnis.* & hæc non [illegible] in ſub [illegible] delinquente contra dominum [illegible] ponderanda eſt ad mitigationem pœnæ. ¶ [illegible] autem [illegible] titur ſeditio non contra dominum, ſed c[illegible] quæ pœna imponatur: ſiquidem agitur de corporali, & au[illegible] te ſeditioſus, locum videtur pœnæ c[illegible] *item qui actor. leg. Corn. de ſica* ſed text. *l. ſi quis aliquid.* §. *authores. ff. de pœn.* quod authores ſeditionis populo conci[illegible] pro q[illegible] gnitatis aut in furcam tolluntur, aut beſtiis [illegible] untur, [illegible] metallum damnantur, quæ peri [illegible] alius autem non authoribus [illegible] ponenda *arg. d.* [illegible] *ab oppoſito.* ¶ Grauiter [illegible] animaduertendum eſt in ſeditioſos, quia ſcelu[illegible] tantum quod punitur [illegible] quia ex ſola [illegible] nondum [illegible] pœna tel [illegible] & p[illegible] *conſ.* [illegible] 2. *Cum* [illegible] *lib.* [illegible] ¶ De [illegible] ten[illegible] tia auide conſ. [illegible] Rippaliæ & O[illegible] bazan [illegible] nomine, [illegible] ſu quibus [illegible] accurate ad omni [illegible] dinem [illegible] *e dilectus filius.* [illegible] Ange [illegible] bi quo ipſi [illegible] p[illegible] *in l. penult. ff. de* [illegible] *gloſſ.* [illegible]

di[illegible] ſ. quod [illegible] p pulum [illegible] ci[illegible] [illegible] Septemb. 1534. A [illegible] Crauetta ex S[illegible] [illegible] iuu[illegible]

S V M M A R I A.

1 *Inuentarium quando con[illegible] [illegible] citare debe[illegible] omne quorum interest [illegible] minatim, quando ſunt certi, & etiam incerti quando de facili poteſt quis de [illegible] certificari.*
2 *Numerus plur[illegible] [illegible]*
3 *Fama debet [illegible] probata [illegible] & quod admini[illegible] facultatem.*
4 *Ignorantia in facto alieno non excuſat, [illegible] quis tenetur [illegible] gare, vel ubi quando facile certior [illegible] tell.*
5 *Pu[illegible] [illegible] vel [illegible] debere.*
6 *Tutor [illegible] citati [illegible] comparent, tunc vocari debent affines, ut pupillo m[illegible] datur.*
7 *R[illegible] tutio in integrum non datur maiori [illegible] iuſta cauſa.*
8 *Ex [illegible] ignorantia non conceditur [illegible] ſtitut[illegible]*
9 *V[illegible] [illegible] pra[illegible] [illegible] ſuppoſitione.*
10 *Error [illegible] in Doctore dolo [illegible] [illegible]*
11 *Er[illegible] non nocet maioribus quoties agitur de vitando damno.*
12 *Heres [illegible] beneficio inuentarii non poteſt [illegible] facto defuncti quatenus hereditas ſoluendo eſt.*

CONSILIVM CCXXV.

Pro magnifico domino Sinfredo, contra magnificum dominum Ioan. Michaelem Cacheranum dominum Ennisrum & ex domini Bricheraxiis ducalem aduocatum & conſiliarium.

DIVINO ſubſidio ex corde poſtulato. De tribus p[illegible] [illegible] liter quæri[illegible] in hac cauſa magnifici domi[illegible] S[illegible] tra magnificum dominum Io. Michaelem Cacheranum [illegible] num [illegible] domini Bricheraxii. Primo an [illegible] tum ipſius domini [illegible] [illegible]rum dicatur legitime fact[illegible] ¶ Secundo, [illegible] illum an concedenda ſit reſt[illegible] ipſi domino [illegible] aduerſus ſolennitatem omiſſa[illegible] eſt ne ipſi [illegible] Tertio, ſtante [illegible] tati, an [illegible] intentio ipſius domini [illegible] agit [illegible] vendicet & recuperet grangiam [illegible] functi [illegible] ipſius domini agentis in ipſum [illegible] tra prohibitionem [illegible] de non alienando, & qui [illegible] ſtatis [illegible] impugnare non poteſt, [illegible] [illegible] pr[illegible] Circa primum dubium [illegible] [illegible] in primo [illegible], inuentarium ipſum legitim[illegible] & impletum [illegible] ipſius [illegible] tate [illegible] ergo valida [illegible] citatio [illegible] putatiui [illegible] 3. poſt. ff. de conſtit. pecun. ubi [illegible] ſit heredi putatiuo, et [illegible] heredi [illegible] per [illegible] ex illa promiſſione competit vero heredi [illegible] F[illegible] heredi putatiuo valet & heredi legitimo prod[illegible] tex. vel. fin. ff. & eo qui pro tutore. ubi quod tutori putatiuo [illegible] iudicium pro tutela aduerſus eum [illegible] bona ad[illegible]

1 ¶ Sed præmiſſis non obſtantibus [illegible] tius, quod ino tale inuentarium non teneat [illegible] tantum citari debent quorum intereſt nominatim, [illegible] certi Bart. & Doct. in l. [illegible] Bal. in [illegible] ad. s. [illegible] Alexan. [illegible] D[illegible] col. 4. [illegible] ſpo[illegible] An[illegible] [illegible] Alexan. [illegible] lib. 2. Decis. [illegible] col. 4. [illegible] certi [illegible] patere [illegible] Baran. [illegible] de Neapol. [illegible] tur quod [illegible] Alex. [illegible] 449 [illegible] in [illegible] Itaq. [illegible] tutor dom. Sinfredo [illegible] [illegible] ceſsit [illegible] pu[illegible] [illegible] videri [illegible] ponderato [illegible] dicit citandos eſ[illegible]

ſi t[illegible] eſ[illegible] habeat pupillos, [illegible] cognatos ſi tutores nō habeāt in [illegible] non ſu[illegible] vnius cognati aut [illegible] num [illegible] ver[illegible] tur in v- 2 no [illegible] ff. [illegible] teſtib. [illegible] ad T[illegible] Maxius §. cum [illegible] & ibi no. ff. de [illegible] de re [illegible] lib. [illegible] manda- tu[illegible] [illegible] per [illegible] ſi nat [illegible] R[illegible] dec. 7. Si committatur [illegible] & dec. 522. no. Quod [illegible] committatur in antiquum [illegible] ſimile videmus in ſtatuto per q[illegible] [illegible] [illegible] gentium in c[illegible] ctu. quia pluſe[illegible] [illegible] habet [illegible] C. vnde vir [illegible] lex [illegible] co[illegible] debeant [illegible] [illegible] vbi [illegible] ndo ſta [illegible] bent, quia [illegible] & peinde eſt [illegible] pro[illegible], & iſtud ſine dubio videtur procedere in [illegible] noſtro, in [illegible] ratio quæ eſt in pluribus, [illegible] vno, [illegible] conſanguinei citentur, licet [illegible] tamen vere [illegible] defenderetur: quo [illegible] eſt in plurib. non militat in vno, nunqu[illegible] verificatur in vno. Bart. in l. 1. ff. de oper. leg. cum ſimi. ve[illegible] De[illegible] in conſi. 471 col. 2 ¶ Sed in caſu noſtro neq. do. Sinf[illegible] pupillus ci[illegible] eſt. [illegible] pupilli citatio ſufficeret, neq. pro[illegible] [illegible] [illegible] ad inuentarium, ſed [illegible] affi- nis [illegible] & [illegible] peccate citat[illegible] aut cor[illegible] Primo quia tutor [illegible] non eſt. Secundo, qui [illegible] tutor [illegible] [illegible] conſang[illegible] [illegible], non [illegible] non [illegible] neq. [illegible] Tertio quia [illegible] [illegible] ad- [illegible] no [illegible] ¶ N[illegible] [illegible] in contrarium quod iſte affinis hab[illegible] re, qu[illegible] modis. Pr[illegible] non [illegible] 3 [illegible] plura- [illegible] ff. [illegible] quod [illegible] ber [illegible] lib. 3. Prob. [illegible] [illegible] [illegible] in admittit [illegible] [illegible] præiudicium [illegible] [illegible] de tutore. ff. [illegible] Dec. [illegible] cons. 4 [illegible] 9 col. [illegible] 25 [illegible] quod tex. [illegible] ¶ [illegible] & [illegible] debeb[illegible] domi- nus agens [illegible] affinem [illegible] [illegible] ret domino [illegible] [illegible] tut[illegible] [illegible] catus [illegible] ſona nominatim [illegible] pe[illegible] [illegible] cons. [illegible] col. 4 4 Et [illegible] vbi [illegible] [illegible] 5 ¶ Ideo cum text. mand. [illegible] in neceſſarium [illegible] [illegible] ri- bus. [illegible] quis [illegible] de- [illegible] [illegible] Bal. [illegible] dec. [illegible] col. 4 [illegible] Alex. [illegible] [illegible] nocetet, [illegible] [illegible] tis [illegible] & ſic [illegible] ſed [illegible] qui [illegible] bus, [illegible] dum tutor vnus [illegible] gloſ. in l. 6. [illegible] 6 tes & [illegible] pupi, videntur tunc aguati [illegible]

bus ex cauſis m poſſ. cator. arguendo ab identitate [illegible]: nam ibi vocantur cogn[illegible] & affines qu[illegible]do pu[illegible]us tutor[illegible] non [illegible] bet qui ipſum defendant. ergo [illegible] eat qui [illegible] non [illegible] fendant, quia eadem videtur ratio [illegible] caſe [illegible] etiam ne diuerſitatis, quia vbi tutores habe[illegible] tenentur pupill[illegible] ſi non defendant. Sed ſatis eſt quod vbi tuto[illegible] plures [illegible] ſunt, [illegible] deben[illegible] non cōparent neq; defendunt, neq. excuſari poteſt pa[illegible] quod ignoraret plures eſſe tutores [illegible] primū vidit quod citatus non comparuit, debebat inqu[illegible] an alij ſſent tutores, maximè quia illud cogitare debebat quod pupillus tā[illegible] nominis & tan[illegible] rum opum [illegible] legitimis tu[illegible] bus [illegible]: ¶ Ex præmiſſis diſſolutum habetur primum dubium, quod inuentariu domini agenti[illegible] viribus no[illegible] nſtat, quatenus [illegible] gitur de præiudicio ipſius dom. Si[illegible] edi no legitimè citat[illegible] valere tamen poteſt quo ad alios creditores aut legatarios legitimè citatos, & ſic [illegible] bit inuentarium quo ad citato[illegible]. & nullum erit quo[illegible] ad non citatos. Ita Bart. *in conſilio 154. Maritus fecit heredem. colum. fin.* Bald. *in conſ. 265 Inuentarium heredis lib.* 3. ¶ Venio nunc ad ſecundum dubium. an reſtitui debeat agens [illegible] integrum ex c[illegible] p[illegible] ignoranciæ, quia ignoraret alios eſſe tutore[illegible] Breuiter reſpon. quod
7 non ſeque nob. fundamentis & primo conſidero quod † reſtit. in integ. non datur maiori, niſi ex iuſta cauſa vt in ver[illegible] edicti prætoris. Si qua mihi iuſta cauſa eſſe videbitur. *l. 1. §. fin. ff. ex quib. cau. maior* ideo non datur reſtitutio negligentibus. *l. non nimium. ff. eod. tit.* Bartol. *in l. ſeruo inuito. § cum prætor. ff. ad Treb. & in l. 1 in fin. C. de ſen. aduer. ſiſium lib.* [illegible] vbi loquitur Bart. in eo qui neglig[illegible] appellare, quod non reſtituitur in integrum, tradit Alex. *in* [illegible] *ſupr. ff. ex quib. cau. maior.* Sed nulla iuſta cauſa in domino actore eſt, cur ad integrum reſtitui debeat, non enim allegat impedimentum aliquod cur dom. Sinfredi legitimè citari facere non potuerit: ¶ Neq; oſtendit quod fecerit citari eū qui pro tutore habebat [illegible] quia ad iſtud abūde reſpūſum fuit ſup. in 1 dubio Ruiſus non obſtat quod ignoraret alios tutores eſſe ſeu qui alij tutores eſſent, quia non reſtituitur in integrum ex cap. ignorantiæ, niſi ignorantia ſit iuſta & probabilis Alexan. *in d. l.* [illegible] *ff. ex quib. cau. maior.* Ideo ſi quis alleget ignorantiam eius de quo publica
8 eſſet fama, ex tali ignorantia non † conceditur reſtitutio. Rom. *in conſ. 127 Poſito quod dominium. in fine.* Similiter non conceditur reſtitutio ex cap. ignorantiæ in facto proprio. Aret. *in conſil.* 1[illegible] *in fine* licet in caſu illo contra Eccleſiam non audeat Aret. decidere. ¶ Sed in caſu ſimili contra communitatem ita decidit Soci. *in conſ. 194.* vbi quod communitas non reſtituitur in integrum propter inſtrumenta de nouo reperta, quæ iuris præſumptione dicebantur eſſe apud ipſam communitatem. Et quod ex ignorantia iniuſta non detur reſtit. in integ. tradit Fel. *in c. vigilanti col. 2. de præſcriptio.* ¶ Se[illegible] iſta ignorantia quod pupillus non haberet alios tutores, non eſt iuſta neq; probabilis, quia remoueri poterat, & debebat ignorantia inquirendo & inueſtigando, an alij eſſent tutores, de qua inquiſitione non modo non fides habita eſt, imo nec allegatur talis inquiſitio. Plane conſtat non excuſare impedimentum quod tolli poteſt. *l. ſed & ſi per prætorem. §. hæc clauſula. ff. ex quib. cau. maior. l. quib.* [illegible] *in prin.* vbi Socinus *in* [illegible] *ff. de cond. & demonſt. l. qui poteſt facere. ff. de reg. iur. c. fin. de electio. c. 2.* vbi Decius *in 4. not. de teſtib. c. cum ſit Rom. de appel. cum ſimil.* & in terminis ignorantiæ, quod non excuſet quando inueſtigando & inquirendo illa tolli poteſt, vbi quis tenetur inueſtigare, eſt textus *l. 3. § cal.* [illegible] *ff. de in rem verſo. l. qui hominem § ſimilis ff. de ſolutio. & ſup. dixi in 1. dubio.* imo ſic ignorans dicitur in lata culpa Pau. de Caſtr. *in conſ. 295 Viſo* [illegible] *colum. 1. poſt med. lib. 1.* & talis ignorantia quando quis tenetur inueſtigare, dicitur habere mixtam negligentiam non inueſtigando. Paol. de Caſt. *in conſil 268. Viſo* [illegible] *circa fin. lib. 2.* Itaq; dum allegat dominus agens ignorantiam circa tutores, magis allegat eius negligentiam [illegible] non inueſtigando de perſonis tutorum, quam iuſtam ignor[illegible] excuſam: ſed [illegible] bus iura non ſubueniunt *d. l. non poteſt. ff. ex quib. cau. maior.* [illegible] *pupillus* [illegible] *ff. de his quæ* [illegible] [illegible] id proponere debebat dominus agens quod feceiat quod in [illegible] [illegible] uirendo & [illegible] qui eſſent tutores [illegible] quando [illegible] quas, debet de ei inqu[illegible] [illegible] *d. l.* [illegible] [illegible] Bal. in d. [illegible] *C. de adulto* [illegible] *conſ.* [illegible] 2. [illegible] qui inue- [illegible] acqu[illegible] [illegible] *qui cum alio ff. de reg.* [illegible] *ſi* [illegible] [illegible] ant[illegible]

bebat inueſtigare [illegible] Sed dominus [illegible] bita, [illegible] inueſtigare [illegible] iſtam [illegible] quod [illegible] [illegible] conſ[illegible] erunt, pitta, [illegible] qui [illegible] ter cu[illegible] excuſat [illegible] *in conſil. 45. Videtur* [illegible] leg nu. per Bar[illegible] & De[illegible] [illegible] quod forenſ[illegible] delinquen[illegible] [illegible] ſtatutai [illegible] turum [illegible] ando per ſtatuta [illegible] qu[illegible] nite p[illegible] bitum eſſe [illegible] ¶ S[illegible] en te[illegible] ex nob[illegible] & magnifica familia [illegible] ſſip[illegible] tes, non conſu[illegible] nerunt [illegible] bus plu[illegible] detur excuſandus agens quod ignoraue[illegible] tu[illegible] q[illegible] o[illegible] dicitur, non præſumi ignor[illegible] [illegible] *in conſilio 481. Pro* [illegible] *col. 1. poſt med.* Sed tutel[illegible] gnifica & ampliſſimi dicitur factum nobile, [illegible] ¶ [illegible] reſpondeo quod in dubio teſtator cenſetur p[illegible] telam prout iis diſponit, quia voluntas [illegible] conformis † diſp[illegible] iuri *l. quare. §. inter* [illegible] 9
Gallus §. 1. ff. de lib. & poſth. l. ſi duo ff. de ac. q. her. B[illegible] & De[illegible] *mei. § cum ita ff. ad Treb.* [illegible] in ſubſtr[illegible] pat[illegible] pupilli prou[illegible] de tuto[illegible] pup[illegible] id eſt, de proximio[illegible] affine, non agnito ne[illegible] to, & quia ad ſucceſſi[illegible] pupi[illegible] venire n[illegible] pote[illegible] excuſatur dominus agen[illegible] affinem a[illegible] torem, cum præſumptio [illegible] contra eum. nam [illegible] um non excuſat contra quem iuris præſumptio eſt [illegible] *§. ſi* [illegible] vbi Bar. *ff. de furt.* Soci. *in d. conſ. 194.* [illegible] Fe[illegible] *de præſumptio.* ¶ Quarto reſpōdeo, quod dominus ag[illegible] ctat de lucro vt [illegible] venditam lucr[illegible] habe[illegible] minis autem Sinfredi [illegible] ctat de damno, ne precium bon[illegible] mittat ſed vbi agit[illegible] lucro, ex cap. ignorantiæ non dat[illegible] ſtitutio maiori quia excuſat ignorantia in damno vitado[illegible] etiam in lucro [illegible] *in ſumma §* [illegible] *ff. de cond.* *per tex. in §* [illegible] *Inſti. de leg.* [illegible] Alexand. *in* [illegible] *fin.* [illegible] *in reg. qui in alterius. ff. de reg. iur.* & in terminis integ[illegible] illa non detur ex cap. ignorantiæ quand[illegible] lu[illegible] alterius, eſt text. *in l.* [illegible] vbi Bar[illegible] *cau. maior.* [illegible] Bartol. *in l. 1. in 1. q. C. de* [illegible] *excep.* Decu[illegible] 2 [illegible] *poſtremo concluſionem ſupra facta.* Pro quo [illegible] cum Bart. [illegible] *qui* [illegible] *§ ſeruus* [illegible] vbi q[illegible] oblitio aut igno. apta allegari non poteſt ex lapſu lo[illegible] tem poris, quando agitur de lucro, ſed ſolum vbi agitur de [illegible] quod dictum Bar pro ſingu[illegible] & menti ſemper tenend[illegible] tur Alex. *in § ſi quis agens. colu. 8. Inſt. de act.* Curt. iun. *in conſ.* [illegible] *4. circa med.* Ad idem adduco quod ſcribit Curt. ſen. *in con.* [illegible] *poſt med.* vbi quod reſtit. in integr. no datur aduerſus [illegible] tempus ad recantandum, quādu terminus recantand[illegible] conceſſus ex mera liberalitate. quia tunc non agitur de damno, ſed de lucro. ¶ Vl[illegible] non competet reſtit. in integr. d[illegible] no agenti ex cauſa aſſertæ ignorantiæ facti, quod ignoraret [illegible] clum, id eſt, alio[illegible] qui citarentur ad [illegible] ¶ Sed dicit dominus a[illegible] quod reſtitui debet in integru[illegible] quia errauit in iure, non inquirendo & inueſtigando [illegible] nis [illegible] torum, qui [illegible] tur: error autem iuris excuſat a do[illegible] *ſed & ſi lex. § ſcire* [illegible] ¶ Ad iſtud reſpondeo q[illegible] ror iuris licet ex[illegible] dolo quo excuſet cauſa quæli[illegible] iniuſta non tamen excuſat [illegible] pa, imo errans in iure d[illegible] lata culpa. *l. ſi* [illegible] *ff. de* [illegible] *ff. de verb. ſig.* Bart. *non* [illegible] tatio huius eſt, quia l[illegible] ges ab omnib[illegible] ſci[illegible] debent. *l. leges ſacratiſſima. C. de legib. l. conſtitutiones. C. de* [illegible] [illegible] nunc dictum quod error iuris dicitur cauſa [illegible] *in l. plagii. C. ad leg. Fa.* [illegible] *de plagi.* Alexan. *in conſ.* [illegible] error iuris d[illegible] culpa & cauſa iniuſta [illegible] quumodu[illegible] torem [illegible] conc[illegible] detur re[illegible] tam[illegible] [illegible] di[illegible] *d. l.* [illegible] *ff.* [illegible] *quib. cau. maiores. &* [illegible] *decimo* [illegible] ¶ S[illegible] [illegible] [illegible] c[illegible] [illegible] d[illegible] [illegible] ro[illegible]

tur cauſa ini iſta & lata culpa *l. quanto magis. ff. de [illegible] multo magis. C. de ſacro. ſanct. eccleſ.* ¶ Tertio in terminis quod maior errans in iure non reſtituatur in integrum, adduco Bartol. *in l. cum fidei commiſſi in columna 2. verſ. [illegible] ff. de confeſſ. & in l. 1. § edictum. ff. de [illegible] no.* Corn. in conſ. 244. colum. 4. lib. 4. vbi tamen Corn. de Bartol. memoriam non habet: maxime autem concedi non debet reſtitutio ob iuris errorem domino agenti viro I. C. & patrono aut aduocato non obſcuro Illuſtriſſimi Caroli Ducis S. [illegible] in [illegible] Doct. iuris error minime ſuſtinetur, vt [illegible] *gl. in l. profeſſio. C. de mun. patri. lib. 10. gl. Bar.* & [illegible] *quos Alex. in l. ciuitas colum. 4. ff. ſi cert. pet.*

10 Guido Pap. [illegible] 88 *ante finem.* [illegible] error iuris in iuriſperito dolo aſcribitur *l. [illegible] per Scribon ff. quod [illegible]* hinc videmus quod licet excuſet error iuris quando imperitiores quis conſuluit [illegible] Doc. tamen [illegible] non [illegible] tur, licet eum ſulueri [illegible] per errores, quia ea per ſe [illegible] debet. Bal. *in l. [illegible] in fin. ff. de bon. poſſ.* Sal. & Me [illegible] *in l. [illegible] C. qui admit.* Sed hoc lineam [illegible] in caſu noſtro in quo dominus [illegible] tractat de lucro, dominus autem [illegible] de damno. Plane vbi maior [illegible] tractaret de damno vitando, a [illegible] de lucro, a-

11 liud diceretur, quia [illegible] error iuris non nocet maioribus, quoties agitur de vitando damno *l. [illegible] ff. de iur. & [illegible]* quod procedit etiam in doct. tractante de damno. *gl. [illegible] de § item vt de cætero in verbo. ſententia [illegible]* 98. quod tamen [illegible] intelligendum eſt probato errore, quod non præſumitur [illegible] ſed probari debet, vt habetur *in d. l. [illegible] & l. [illegible] ff. de [illegible]* De qua materia an probari debeat [illegible] & quo modo probetur, latiſſime alias ſcripſi, ſed hic tractare non expedit. ¶ Quod autem dominus agens [illegible] de lucro, patet, quia aſpirat ad hereditatem, ſed hereditas etiam aſcendentis dicitur hab[illegible] nii conſtaret ab initio heredi[illegible] tem ſui [illegible] non eſt. Alexand. *in l. [illegible] § ſi[illegible] ff. de verb. oblig. ampliando text. in l. ſi [illegible] C. [illegible]* no. Dec. *in l. [illegible]* ¶ Ex præmiſſis abunde & clare ſatis videtur explicatum [illegible] dubium. Reſtat vt videamus de 3. dubio [illegible] & non [illegible] inuentarium legitime eſſe con[illegible] dum, an illud releuet dominum agentem. Super quo [illegible] interreſpondeo quod non [illegible] probet agens he-

12 reſt. [illegible] quod hereditas fratris [illegible] non ſit, nam etiam heres beneficio inuentarii non poteſt contrauenire facto defuncti, quia [illegible] ſoluendo eſt. *glo.* & Doct. *in l. ſi § in computatione C. de iure delib.* Rom. *in conſ. [illegible]* Paul. de Caſt. *in conſ.* 3[illegible] *in [illegible] conſ. colum. 2. lib. 2.* Alex. *in conſ. 6[illegible] colu. 2. lib. 3.* [illegible] *lex quæ per ſe [illegible] ff. [illegible]* Sed hoc probatum non fuit quod he[illegible] non ſit ſufficiens ad bona alienata, imo dicitur hered[illegible] ſoluendo eſſe. ¶ Quod ipſum tamen probari videtur [illegible] inſpectione inuentarii, ſi legitime factum eſſet, nam poteſt [illegible] non ſunt plura bona in hereditate, & qui [illegible] tenetur probare *l. ſi § licentia C. de iure delib. & l. [illegible] de proba.* Rom. *in conſ. 222 Dubitatur. in fin. & in conſ. 271. Viſo in fin.* Paul. de Caſt. *in conſ. 212 [illegible] ſu. colum. 2. in 2. [illegible] lib. 1.* Alexand. *in conſ. 41. in fin. lib. 3. in conſ. [illegible] col. fin. lib. 4. & in conſ. 16 colu. fin. lib. 5.* Curt. ſen. *in conſ. 27 colum. [illegible] verſ. ſed contra præmiſſam concluſionem.* vbi quod iſta eſt communis ſententia. idem tenet Iaſ. *in l. cum ex cauſa ff. de re iud. & in l. ſi conſtante col. 9. ff. ſol. matr. & in conſ. 34. colum. 3. [illegible] lib. 1.* Guido Papæ q. 142. Curt. iun. *in conſ. 150. colum. 5. poſt med. vbi quod gl. in d. l. cum de lege, eſt communiter approbat.* Illam etiam glo. [illegible] Gozad. *in conſ. 94. column. 7. [illegible]* ¶ [illegible] habita æſtimatione bonorum ad inuentarium deſcriptorum, facile futurum ſit iudicium an hereditas ſoluendo ſit, non præſtita [illegible] probatione quod plura ſint. ¶ Ex abundanti tamen [illegible] ſufficienter ſunt [illegible] dubium, ſtante nullitate inuentarii ex defectu [illegible] remedium [illegible] in [illegible] 1. & 2. dubio [illegible] Taurini. 6. Octobr. 1534. Dicta ſententia in fauorem [illegible] domini Sinfredi per magnificum Senatum [illegible] Taurini ordinarie reſidentem. Aymo Crauetta Sauilianus. I. V. D.

S V M M A R I A.

1 *Præſcriptio ſeruitutis [illegible] annis inter præſentes, 20. inter abſentes etiam [illegible]*
2 *Seruitus probari debet [illegible] titulo allegato, & neceſſario debet concludere.*
3 *Cauſa ſeruitutis allegata debet eſſe certa, intelligibilis, & apta, & coharens.*
4 *Is cui ſeruitus debetur, non poteſt eam duriorem facere inuito eo qui ſeruitutem debet.*
5 *Præſumitur quis poſſediſſe ex præcedenti [illegible]*
6 *R[illegible] præ[illegible] ſeruitutem anteċedere, quia quod non eſt, reſeruari [illegible]*
7 *Ignorans [illegible] alicuius actus, non poteſt dici illum approbare.*
8 *Actor ſicut tenetur probare fundamentum ſuæ intentionis, ita tenetur reus probare fundamentum ſuæ exceptionis.*
9 *Præ[illegible] taciturnitate non inducit renunciationem iuris ſui, ſed requiritur [illegible] expreſſio.*
10 *Vbi agitur de graui præiudicio præſens & tacens conſentire non cenſetur*
11 *Creditur teſtibus deponentibus affirmatiuam potius quam teſtibus deponentibus negatiuam*

CONSILIVM CCXXVI.

De præſcriptione ſeruitutis.

Diuino ſubſidio [illegible] ordine poſtulato. Licet abunde ſcriptum [illegible] per [illegible] Iuriſc. dom. Michaelem Bianchetti [illegible] tamen [illegible] opera [illegible] deatur [illegible] nonnihil & noſter [illegible] ad [illegible] dam concluſionem [illegible] ¶ In principio igitur conſiderandum eſt [illegible] per [illegible] annis, [illegible] inter præſentes, & vi- 1 ginti inter abſentes, quando [illegible] probetur, quia ex curriculo tanti [illegible] tus. vt no. *in l. [illegible] ff. de ſeruit. [illegible] ff. de acquiren. hered. in l. ſi certis annis. C. de pac. inter [illegible] & inc de quarta vbi [illegible] cod. tit.* Requiritur tamen [illegible] probatio quod vſus 2 quis fuerit [illegible] tanquam ex titulo allegato, & illa probatio debet de neceſſitate concludere. *l. non ha[illegible] cap. in præſentia. de proba.* ideo non valeret conſequentia: hodie allego talem titulum ſeruitutis, ergo in præteritum iſta ſeruitute vſus ſum ex titulo allegato, quia vt potuiſſem ex alia cauſa putaiure precario vel familiaritatis. ita concludit Alex. *in conſ. 108. [illegible] 2. in conſ. 113. lib. 1. & in conſ. [illegible] lib. 4. Iaſ. in d. l. qui aliena ſuppetit [illegible] verſ. tamen etiam tenet ff. de acq. her.* ¶ Confirmatur hoc optime à [illegible] argumento probans conſuetudinem eſſe quod maſculi excludant fœminas, non ſufficeret ſi probaret quod fœminæ fuerunt excluſæ per maſculos, niſi probet quod excluſæ fuerunt e[illegible] cauſa conſuetudinis, quia non ſequitur fœminæ fuerunt excluſæ, ergo inducta conſuetudo excludendi, nam excludi potuerunt ex alia cauſa, puta quia in teſtamento fuerant exhered. [illegible] aut alite[illegible] maſculi fœminis prælati: ita notabiliter dicit Ancha. *in conſ. [illegible] Pro maiori intelligentia colu. 4. ver. ad ſecundam rationem* ſimiliter ſtante ſtatuto quod filius non obligetur niſi artifex vel mercator, licet filius ſit artifex vel mercator, hoc non ſufficeret ad validandum contractum, niſi contraheret ex cauſa illius artis vel mercantiæ. Bal. *in l. ſi ita. § ex hoc edicto ff. nau. caup. ſtab.* Alex. *in conſ. 2[illegible]8 colum. pen. ver. hoc probo lib. 2.* Dec. *in c. poſt ceſſionem colum. 7. de proba.* videmus etiam quod ſi quis tenetur quid implere ex parte ſua, non ſufficeret illud de facto implere, niſi illud fieret tanquam ex cauſa implementi. *l. 2. ff. de cond. & dem. l. cum ſeruum.* & vbique Bar. *ff. de cond. & dem.* ¶ Sed magis in terminis adduco Bart. *in l. 1. §. hoc interdicto. ff. de itin. actuq. priua.* vbi quod ſufficit probare quod quis commoditate aut iure aliquo vſus ſit, niſi probetur quod iure ſeruitutis vſus ſit, cum pluribus & diuerſis cauſis quis vt poſſit, item tradit Bal. *in conſ. 352. Materia feudorum col. 2. verſ. item quod vtens. lib. 1.* Paul. de Caſt. *in conſ. 413. Videtur quod non poſſet. libr. 2.* vbi quod in præſcribenda ſeruitute requiritur quod quis vſus fuerit re tanquam ex iure aut ex cauſa ſeruitutis. idem tradit Calc. *in conſ. 36. col. 6. ante med. ver. ad hoc accedat. & in conſ. 53. col. 2. circa med. per tex. in l. ſi ff. quem. ſeru. amit. & in l. 1. §. Ariſt. ff. de Aqua quot. & æſtiua.* ¶ Rurſus † cauſa ſeruitutis allegata debet eſſe certa, intelligibilis, apta, potens & cohærens, & ex eo quod ſcribit Alex. *in conſ. 80. col. ſi. lib. 2.* vbi cauſa, quæ requiritur in obligatione debet eſſe eiuſmodi: idem tradit Guid. Papæ. *q. 408.* vbi quod in iure præſtationis annuæ debet allegari cauſa in ſpecie, quæ ſit idonea & ſufficiens, licet neceſſe non ſit eam probari, ſed præſumatur ex lapſu temporis, niſi ſit tantum tempus cuius initii memoria non extat in contrarium, quia tunc non requiritur allegatio cauſæ. A fortiori idem dicendum eſt in cauſa quæ ab initio ſeruitutis expreſſa non probatur, ſed præſumitur ex ſola allegat. iuncta antiquitate temporis, alias eſſent duæ ſpecialitates, prima, quod præſumatur cauſa ex ſola [illegible] cum curſu temporis, licet aliter veritas cauſæ non probetur, ſecunda ſpecialitas quia ſufficeret cauſa quæuis non certa, non intelligibilis, non apta, potens & cohærens, ſed plura ſpecialia cumulari non poſſunt. *l. 1. C. de dot. promi. no. ca.* & idem Iaſ. *in l. quoniam in prioribus. colum. pen. C. de*

in eſſ. trſla. Dec. in conſilio 428 col. fi. ¶ Sed hic probata fuit poſſeſſio ſeu quaſi temporis longiſſimi [illegible] tem computato tempore autorum ipſius agentis, quæ tempora ſunt coniungenda ad implendum præſcriptionem l. Pomp. § cum quis. vbi [illegible] ff. de acq. poſ. item probatum fuit quod agens ſæpius dixit ſe habere ſeruitutem de qua agitur, cum ipſe [illegible] vteretur ob cauſam allegatam ex quo facile arguitur vſum [illegible] ex cauſa ipſa allegata. Pro hoc quod [illegible] Pau. de [illegible] in conſ. 51. In cauſa ſpe tabularum. colu. 2. poſt med. ver. nec etiam obſtat ſtilicatur lib. 2 [illegible] quod præſtatio annua præſumitur facta ex cauſa donationis [illegible] cauſa præcedens ſolum probetur relatiue aut enumeratiue ¶ Præterea, ſatis dicitur probari quod quis vſus fuerit via tanquam ex iure ſeruitutis ex natura [illegible] ipſorum actuum, quando [illegible] actus, qui de facili non competunt niſi habenti ius ſeruitutis, vel ei qui [illegible] iure ſuo [illegible] Cod. de commun. rer. lib. ſequitur Alex. in conſil. 68. col. [illegible] lib. 2. ſed actu [illegible] agens [illegible] ſeruitute [illegible] aliqua petit [illegible] & [illegible] niſi habeat [illegible] ciendi, vel [illegible] intendat. ¶ [illegible] agentia [illegible] aduerſ [illegible] uſanſdu [illegible] præſtare [illegible], eius vſum deterior [illegible] facere l. ſeruitute §. ſi ſeruitus. C [illegible] quando [illegible] & l. loci corpus § ſi quis mihi verſic. [illegible] & ſi arborem [illegible] vend. [illegible] ff. de ſer. [illegible] habe. Paul. de Caſtr. [illegible] col. [illegible] At [illegible] conſil. [illegible] in conſ. 45. volu. 3. in [illegible] Calc. in conſ. [illegible] colum. 2. Alibi, no. gloſſ. & Bar. in l. [illegible] conſ. ff. de ſeruit. in gloſſ. fi. quod dominus [illegible] debentis ſeruitutem in aliquo loco ipſius fundi, non poteſt ad alium [illegible] eandem mutare, quando mutatio damnum [illegible] ſeruitute [illegible] debetur. [illegible] & ſumpt. ſum. no. [illegible] col. [illegible] ff. de op. no. nun. [illegible] Doct. in l. 2 [illegible] vbi [illegible] circa [illegible] an teneatur quis facere quod ſibi non nocet & alteri [illegible] B. l. Nouit [illegible] de loc. par 8 [illegible] amplius permittitur [illegible] ſeruitus debetur in alieno loco, ea agere & [illegible] quæ ad ſeruitutis vſum [illegible] ſeruitutes. § ſi domo ff. de ſerui. vrba. prædi. l. ſi iter [illegible] ff. comm. præd. & [illegible] Bart. [illegible] poteſt [illegible] poſſeſſione aut vſu ſeruitutis Practi. Pap. in formis libelli in actione conſeſſoria in verſu. plene [illegible] ſed teſtes [illegible] examinati omnes [illegible] impedimentum [illegible] eſſe deterto [illegible] ſeruitutis ¶ Sic etiam econtra non poteſt [illegible]

4 cui ſeruitus debetur [illegible] facere inuito [illegible] qui ſeruitutem debet [illegible] ſi ſeruitute [illegible] ff. de ſeruit. vrba. præd. Corn. in conſil. 84. [illegible] lib. 1. & in conſ. [illegible] colum. [illegible] lib. 1 Iaſ. in l. quominus. q. 29 ff. de flum. Soc. in conſ. 143 [illegible] ¶ Supereſt vt reſpondeamus ad ea quæ in contrarium [illegible], & primo non obſtat quod [illegible] iure familiaritatis, quia illud non procedit [illegible] aliqua cauſa ſeu aliquis titulus ipſius ſeruitutis [illegible] præſumptio familiaritatis, & † [illegible] eſtimitur quis poſſediſſe ex tit.

5 præcedenti, quædam mulier ff. de rei vend. l. 2. Cod. de acq. poſſ. vbi Bar. Bal. Ang. Pau. de Caſtr. in l. ſi ex ſtipulatione ff. de acq. poſſ. [illegible] Doct. in l. qui iure ff. [illegible] in conſ. [illegible] Dom. Thomas [illegible] col. [illegible] Anc. in conſil. [illegible] colum. [illegible] in conſ. 242. Prius de vero [illegible] & in conſil. 252 [illegible] Soc. in conſil. 6 [illegible] col. [illegible] lib. [illegible] allegatis [illegible] Laurenti Pintetti [illegible] quod ſine [illegible] quæ alleg. tio ſuffic. ¶ Secundo [illegible] probatum [illegible] ex reſeruatione ipſius ſeruitutis facta per illum Laurentium, quando rem alienauit in Bernardum Bo[illegible] quo [illegible] obuia [illegible] teur. non eſt neceſſe probare quod [illegible] quis vius ſeruitute tanquam ex eo [illegible] præſumitur [illegible] mulier. nam [illegible] primordio tit. poſterior [illegible] euentu [illegible] fin. Cod. de impo. lucra. deſcrip. lib. [illegible] & talis præ[illegible] dicata dem [illegible] de vino tritic. leg. [illegible] ¶ [illegible] reſpon[illegible] in perſona A[illegible] nulla eſt prob[illegible] ipſe gens [illegible] tempus. ¶ [illegible] eius [illegible] quod ex [illegible]

6 [illegible] reſerua-

tum antecedere, quia quod non eſt, reſeruari non [illegible] ſuſ. c. ſuper de renun. l. adeo. § quod ſi toto. ff. de acq. rer. [illegible] negem tamen quin [illegible] reſeruationis quis d[illegible] tutem imponere poſſit [illegible] dominus aut [illegible] vel ſi habens binas ædes [illegible] reſeruationem [illegible] tutis, quæ antea [illegible] fuerint illa ſeruitus [illegible] hæredes & [illegible] quia primo loco [illegible], iſta obſeruatio poſtea ſe[illegible] clarat ipſam ſeruitutem [illegible] nam ex ſequentib. præcedentia declarantur l. [illegible] & §. interdum verſ. [illegible] ff. ad [illegible] in. & hoc modo ab obſeruatione [illegible] præcedentem dubiam. Socinus in conſ. 15 [illegible] 10 probatur lib. 1 in conſ. 145. col. 2. cod. lib. in conſ. 66 [illegible] pe. ad fi. lib. 3. Rom. in conſ. [illegible] col. 2. ver. 3 [illegible] allegan. ſeruitutem habeat prædia tam vrbana quam [illegible] ſeruitutem, omnia conueniunt [illegible] realem, [illegible] potius dicenda eſt [illegible] &

Doc. in l. fi. ff. de ope. no. nu. Anch. in conſ. 251. præmittendum eſt quod [illegible] per iſtud pactum late Dec. in conſ. [illegible] obligatio in dubio præſumitur realis. Dec. in conſ. [illegible] tertea [illegible] eſt quod agens [illegible] habeat intentionem funda[illegible] miſſis, quæ non ſonant in aliquam obligationem [illegible] ſed [illegible] probari [illegible] debere [illegible] ¶ Non obſtat quod agens debebat [illegible] pedire [illegible] perfecta. quia reſpondetur [illegible] notans eiuſmodi ædificationis [illegible] conſenſum in non prohibendo ipſam [illegible] hic onus probandi, quod agens ſciuerit ædifica[illegible] ignorans non cenſetur conſentire l. [illegible] ff. [illegible] repudianda ff. de acq. her. imo probandi videtur ſcien[illegible] expreſſa, quod renuncians [illegible] quasi renunciat, & [illegible] ab alio poſſidet. Alex. in con. 8 [illegible] med. lib. 2. quid dic[illegible] in renunciatione tacita, in qua [illegible] renuncian[illegible] clare apparet prout in renuncia[illegible]

expreſſa [illegible] ignorans [illegible] alicuius act[illegible] non po- 7

teſt dici [illegible] Alex. in conſ. 137 col. 1 circa [illegible] 7. item ignorans non poteſt [illegible] contemnere [illegible] quia [illegible] conceſſio [illegible] ſi ignoran[illegible] Sylla l. generale. Cod. de tab. libro 10 l. genero [illegible] Old. in conſil. 184. & ignor[illegible] maxime præſumitur [illegible] matrimonium accuſare poſſunt l. Titius. §. 1 [illegible] ff. de lib. & poſth. Bar. & Mode. in l. [illegible] de acq. her. Iaſ. in l. ſi is qui pro emptore col. [illegible] cap. & alibi ſæpe Doc. Ad partem igitur [illegible] quoad [illegible] renunciauit iuri ſuo patiendo [illegible] impedimentum [illegible], pertinebat onus probandi ipſam renunciationem [illegible]

nam, ſicut actor tenetur probare fundamentum [illegible] intentionis, ita tenetur reus probare fundamentum ſuæ exceptionis l. 1. 8

ff. de excep. l. quam, [illegible] ff. de proba. B[illegible] frustra [illegible] C. de pro[illegible] ad probandum [illegible] renunciationem [illegible] neceſſaria probatio ſcientiæ & præſentiæ ipſius agentis, quia abſens & ignorans non cenſetur renunciare [illegible] ſupra dixi [illegible] de taciturnitate abſentis quod [illegible] non præiudicet [illegible] Soc. in conſ. [illegible] col. 4. ver. præterea ex quo lib. [illegible] ¶ [illegible] quod obiicitur [illegible] culpam quod aliquis non [illegible] tenetur probare ſcientiam, id eſt quod [illegible] puta obi[illegible] quod [illegible] hoc mandari [illegible] bat quod [illegible] & Doct. [illegible] prætermiſſi. de off. de le. Dec. in conſ. 437. ſimiliter obi[illegible] quod non poſuerit aliquas res in inuentario, nam debet probari quod [illegible] de ipſis reb. Bar. in conſ. 14 [illegible] col. [illegible] 50 in 3. dub. [illegible] quod non ipſo[illegible] ædificium [illegible] loco debente ſeruitutem, [illegible] quod [illegible] ædifi[illegible] ¶ [illegible] & impedimento ædificationis [illegible] agere poſſet ad [illegible] remotionem [illegible]

nec † eſt verum quod ex ſola præſentia [illegible] 9

cant renunciare [illegible] ſed requiritur con[illegible] exp[illegible] [illegible] quod [illegible] alien[illegible] [illegible] C. [illegible] infami [illegible] nam [illegible] prædia ſo. Mariæ agentis eſſent modici valoris [illegible]

10 tem habere non poſſint: & † vbi agitur de graui præiudicio, præſens & tacens conſentire non cenſetur, vt not. in d.l. quæ dotis. vbi Iaſ. colum. 13. Dec. in §. cæterum. col. 5. de eod. ¶ Sed tamen ſcientia præſuppoſita videretur in hoc dubitabile quod ſi dominus fundi ſ[illegible] entis in eo fundo ædificauerit, ſciente & patiente domino fundi cui ſeruitus debetur, cogatur ad tollendum ædificium. nam in contrarium videtur tex. in l. prohibere §. illud. & §. ſeq. ff. quod vi aut clam per quem tex. contrarium dicit Ang. in conſ. 1. Paul. etiam de Caſt. in conſ. 317. Super primo quæſito reſpondeo. colum. 2. in 3. dub. lib. 2. concludit præiudicium fieri ſcienti & patienti ædificari in ſolo in quo ius prætendit: pro quo videtur text. in l. Labeo. iuncta gloſſ. ff. de aqua plu. arc. vbi quod tacens quando fit ædificium præiudicat vt ne agat ad operis demolitionem, licet agat ad damnum, & ſic præiudicat taciturnitas quoties agitur de deſtructione aut reuocatione actus, ideo tacens in vnione Eccleſiæ reuocare eam non poteſt. Oldra. in conſi. 257. Factum tale eſt Dominus Nicolaus. in fin. ¶ Et tenendo hanc opinionem, dicendum eſt, quod in caſu d. §. ſed ſiquidem. vicinus ignorauerat ædificium fieri in loco ſeruiente: ſed tamen in caſu noſtro non poteſt allegari aliqua ſcientia neque patientia cum ipſe Io. Maria eſſet abſens ¶ Reperio tamen Bal. in conſ. 329. Factum tale eſt, communitas Lucæ. lib. 2. vbi voluit non nocere patientiam ſcientis ædificari niſi concurrat lapſus ſaltem decem [illegible], ita quod ædificium ita ſteterit per decem annos, alias quod deſtrui debet quando non iure factum eſt. Idem vult Bald. in conſilio 478. Super hoc puncto. lib. 2. dummodo non fiat ædificium in re communi ſed non placet Bal. opinio ¶ Non obſtat quod teſtes partis dicunt fuiſſe impoſſibile vt duci poſſent currus per eum locum propter illã foueam & poſtem, quia non concludunt quod illa fouea eſſet in loco per quem competit ſeruitus viæ & de qua lis exercetur. ¶ Secundo reſpondeo, regulariter eſſe habendam fidem teſtib. agentis deponentib. affirmatiuam potius quam teſtibus partis deponentibus negatiuam. gloſſ. in l. [illegible] præferre. §. ſi plus. ff. de arb. Bar. in l. 1. in prin. ff. de ven. inſpiciendo. & in l. heredes palam in prin. ff. de teſta. Alex. in conſ. 169. ad fi. lib. 5. Aret. in conſ. 65. colu. 1. & col. 2. ver. ergo data paritate. & in conſ. 7. colum. 4. verſ. & cum ex parte Naldoli. Soc. in conſ. 96. colum. pen. lib. 1. & in conſilio 54. colum. 4. ad fin. lib. 4. Dec. in conſil. 97. colum. fin. Iaſ. in rub. ff. de iur. Curt. Iun. in conſi. 1 col. 1. 2. maxime quia etiam teſtes partis dicunt quod per ſedimen de quo agitur, viderunt exercere vſum viæ, quos teſtes reprobare nõ poteſt pars quæ eos produxit. l. ſi quis teſtibus. C. de teſti. [illegible] l. 1. §. editiones. ff. de edendo. ¶ Ex quibus concludo pronunciandum oportere in fauorem agentis ſaluo [illegible] iudicio. Taurini 10. Octobr. 1534. Aymo Crauetta à Sauiliano. I. C.

Svmmaria.

1 Ceſſio extenditur etiam ad bona mobilia quando eſt facta generaliter & vniuerſaliter.

2 Sec[illegible] & ceſſionarius concurrentes contra tertium, præfertur ceſſionarius habens ius vtile, quoniam ceſſio fit ad commodum ipſius ceſſionarii.

3 Ratio gen[illegible] ampliat diſpoſitionem ad limites ipſius rationis.

4 Ratio generalis facit di[illegible] extendi ad caſum ad quem alias non adaptaretur, etiam in materia ſtricta.

5 Quando ratio eſt expreſſa in lege, vbicunq; locum habet ratio, æque locum habet legis diſpoſitio, licet ſit contra ius commune.

6 Lex extenditur ad omnes ca[illegible], quibus adaptatur ratio legis, licet lex ſtrictius loquatur in parte diſpoſitiua.

7 Ratio finalis diſpoſitionis ſi inducat reſtrictionem, ex ea reſtringitur diſpoſitio generalis.

8 G[illegible] declaratione & reſtrictione per dictionem limitatiuam, genus non [illegible], propter ſpecies enumeratas & ſequentes.

9 Qu[illegible] circa eandem perſonam ponuntur genus & ſpecies, ſpecies videtur poſita gratia demonſtrationis, non limitationis.

10 Maxime [illegible] habet vim incluſiuam, & implicatiuam, ſicut dictio tam [illegible] augmentatiua.

11 Ge[illegible] diſpoſitio non comprehendet minora expreſſis.

12 [illegible] debent intelligi late, quatenus ipſorum proprietas patitur.

13 Vniuerſalia verba ſimpliciter omnia comprehendunt quæ excogitari poſſunt.

14 [illegible] verbis vniuerſalibus tranſit in ceſſio ad iura [illegible] incognita & incogitata [illegible] ſaltem dicitur cogitatum in genere.

15 In materia diſpenſationis verba debent intelligi vt aliquid operentur.

Consilivm CCXXVII.

In caſu ceſſionis, D. Iaffredi Regis & Ioan. Regis.

Divino ſubſidio ex corde poſtulato. Iaffredus regis ceſſit Ioanni regis quæcunque iura ſibi competentia pro tertia parte in bonis Ludouici regis eius patris, tam ex cauſa competentia ſub eius teſtamento, quam alia quauis de cauſa: deinde in ipſa ceſſione ſpeciatim exprimuntur aliqua bona immobilia ſuper quibus prætendebat ius obtinere, quorum bonorum vſusfructus erat relictus Felicinæ vori dicti Ludouici. Deinde poſt expreſſionem dictorum bonorum immobiliũ quondam Ludouici regis, dicit quod ſpoliat ſe dictis bonis & iuribus, ponendo ipſum ceſſionarium in locum ſuum, videlicet quo ad dictam tertiam partem dictorum bonorum & iurũ. eidem Felicinæ legatorum, vna cum omnibus iuribus & pertinentiis ipſorum bonorum. Nunc Ioannes regis ceſſionarius obtinet quædam bona mobilia dicti quondam Ludouici regis quæ Iaffredus cedens contendit ad ſe pertinere, non obſtante illa generali ceſſione, quia putat eam reſtringi ad bona ſpecificata tãtum. quæritur quid iuris. ¶ Breuiter puto illam ceſſionem extendi etiam ad bona mobilia: nam ceſſio fuit facta generaliter & vniuerſaliter de omnibus iuribus competentib. ex teſtamento Ludouici regis pro tertia parte, ſed iſta bona mobilia non poſſunt pertinere ad Iaffredum regis niſi ex d[illegible] teſtamento cui renunciauit in fauore Ioan. regis, ſed poſt renunciationem non datur regreſſus. l. quæritur. §. ſi venditor. ff. de ædil. edict. l. [illegible] qui ſemel. ff. de ſuc. edic. [illegible] non videtur. ff. ſi quid in fraud. patr. [illegible] poſtquam lis [illegible] de pac. & l. fin. C. de remiſ. pign. c. quam periculoſum. 7. quæſt. [illegible] bonus text. in l. ſi maritus ſit. §. ſi neg. maritus. ff. de adult. late Iaſ. in l. ſi quis ſuus C. [illegible] iure delib. ¶ Secundo ex illa ceſſione iurium competentium ex dicto teſtamento, directæ actiones manſerunt apud Iaffredum, [illegible] tiles translatæ ſunt in ceſſionarium, † ita quod ſi cedens & ceſſionarius concurrunt contra tertium. præfertur ceſſionarius habens ius vtile, quoniam ceſſio eſt facta ad commodum ipſius ceſſionarii. l. 3. C. de noua. no. Bart. in l. ſi a[illegible] §. [illegible] ff. ad [illegible] in l. curatoris. C. de neg. geſt. à fortiori Ioannes ce[illegible] ius p[illegible] te exceptionis, facit text. in c. intelleximus. de iudic. [illegible] exceptioni. ¶ Tertio, cauſa finalis quæ mouit cedentem fuit, quia vſusfr. dictorum bonorum pertinebat ad F[illegible], & tempore erat vt cedens nihil commodi reciperet ex eis ſi præ[illegible]oteretur, ideo maluit præſens precium conſequi ab ipſo ceſſionario, quæ cauſa finalis colligitur ex præfatione inſtrumenti [illegible] l. fin. ff. de her. inſtit. l. in princip. ff. ad Macedo. & vbiq; Bart. nam contr[illegible] ceſſionis factus fuit ob cauſam illius vſusfructus: qu[illegible] ctu ceſſante, ceſſio facta non fuiſſet, vt colligitur ex [illegible] verbis contractus, quo caſu talis cauſa dicitur finalis. [illegible] in l. 2. §. fin. ff. de dona. Corn. in conſ. 101. col. fin. lib. 1. Soc. in conſ. 26. col. [illegible] lib. Iſta ratio eſt generalis ad omnia bona etiam mobilia, ergo ex ratione declaratur voluntas cedentis, quod voluit cedere etiã iura competentia ad bona mobilia, quia † ratio generalis ampliat diſpoſitionem ad limites ipſius rationis. l. hac actio. ff. de [illegible] & licet vbi Bart. & Bald. ff. de iure & fa. [illegible] l. nomen debitoris. §. fin. ff. de leg. 3. Bart. in l. pater pluſum §. fundum. in fin. ff. de leg. 3. Corn. in l. voluntas. & ibi Bald. C. [illegible] fideic. Alexand. in conſ. [illegible] 9. Attentis verbis. colum. ſecunda libro tertio. ¶ † Et ratio generalis facit dictum extendi ad caſum ad quem alias non adaptantur verba etiam in materia ſtricta Corn. in conſ. 273. colum. 2. ad fin. lib. 4. alleg. gl. & d. auth. [illegible] de elect. Ad idem adduco Paul. de Caſt. in l. ſi vero §. de viro [illegible] ſol. matr. vbi † quando ratio eſt expreſſa in lege, vbicunq; locum habet ratio, æque locum habet legis diſpoſitio, licet ſit contra ius cõmune, & ſic fit extenſio de caſu ad caſum, & de perſona ad perſonam propter rationem expreſſam. per glo. in d. c. 1. in ver. [illegible] de electio. quod Paul. dictum refert & ſequitur Curt. ſen. [illegible] col. 3. ante med. ver. & in propoſito noſtro. Add. idem adduco [illegible] conſ. 29. col. 1. vbi † quod lex extenditur ad omnes caſus [illegible] aptatur ratio legis, licet lex ſtrictius loquatur in parte [illegible] ua per gl. in d. c. 1. de electio. in c. [illegible] §. denique in ver. iuſtos [illegible] elect. lib. 6. & in c. quoniam frequenter. §. porro. in ver. [illegible] non [illegible] quod procedit etiam in lege exorbitanti. G[illegible] & poſt prin. videmus etiã quod ſtatutum ſiue correctorium [illegible] ans extenditur & ampliatur ad omnes caſus qui ſub ratione expreſſa comprehendi poſſunt. Bal. & Mode. in auth. quas actiones. in 3. q. C. de ſacroſ. eccl. idem voluit Gemi. in d. conſ. [illegible] colu. 2. poſt prin. ſic è contra ſi ratio finalis diſpoſitionis ſuadet reſtrictionem, ex ea reſtringitur † diſpoſitio generalis. Aret. in con. 143. Viſa [illegible] quod 7 commu[illegible] colum. 4. & 5. alleg. tex. in l. cum pater. §. dulciſſimis. ff. [illegible] 2 c[illegible] ſequitur & confirmat Dec. in conſ. [illegible] 9 col. 4. ver. & vlterius. Et ſi generalis diſpoſitio generaliter eſt [illegible] quod ſit maior ratio in vno caſu quam in alio l. 1. §. & generaliter. ff. [illegible] leg. præſt. in l. 1 §. quod autem. ff. de alea. Dec. in rub. de [illegible] colum. [illegible] 1. columna 3. poſt med. de prob. & alibi ſæpe. à fortiori quando eadem eſt ratio in omni caſu, quia ratio generalis [illegible]

generalē. Bar. in d. l. [illegible] *fundū in fi. ff. de leg.* [illegible] prohi[illegible] alienan[illegible] generale, quando ratio prohibitionis eſt generalis l. 1. C. de [illegible] ff. de poſſeſ. quæ[illegible] ad [illegible] Paul. de C[illegible] in conſil. 25 [illegible] *qua quadam ſecuritate. columna* [illegible] *in conſil.* [illegible] *column. 2. circa fi.* [illegible] *column. 2 poſt med. & in conſ.* [illegible] *colu. 2. ad fi.* qui [illegible] quando ratio eſt generalis, oportet vt diſpoſitio generaliter intelligatur, licet loquatur in aliquo caſu ſpeciali. Bar. in l. [illegible] §. *ſi quis ff. de contr.* & *fac.* [illegible] *hoc modo concepta colum. 4. circa princip. ff. de ver.* [illegible] *in conſ.* [illegible] *poſt med. lib.* [illegible] Albi ſcribit Bald. in l. 1. C. *fid.* [illegible] *qui* [illegible] *dat. poſ.* quod ratio generalis diſponit de lege, [illegible] de ratione, idem dicimus, quod iſta ratio diſponat de [illegible] declarando & extendendo, non autem [illegible] de [illegible] de ratione, & eam reſtringere ad bona [illegible] ſpe[illegible] de ille d. Bal. [illegible] ſeſtum [illegible] conſulendn, [illegible] quod [illegible] non habent [illegible] lecturam Bald. ita dicit Cor. *in conſ.* 227 *ad fi. lib. 2. in conſ.* [illegible] *col.* [illegible] *in conſ.* 121 *col. fi.* & *in conſ.* 236. [illegible] *lib. 3.* & *in conſ.* [illegible] *colu. pen. lib. 4.* ¶ Quartu, licet poſt generalem ceſſionem fuerint ſpecificata aliqua bona, illa tamē ſpecierum enumeratio non reſtringit ceſſionem generalem quo minus ad omnia generaliter pertineat, & cenſentur ſpecies enumeratæ [illegible] *ff. de* [illegible] *fa.* [illegible] *ſtipula* [illegible] *commodi,* [illegible] & *l. dol.* [illegible] *ff. de verb.* [illegible] & *legata in princ. ff. de ſupel. legat.* a. Soc. *in conſ.* 30 [illegible] *col. 2. lib. 1.* quod ſine dubio obtinet quando [illegible] ſpecierum enumeratio non fit per [illegible] dictionem limitatam, puta, ſi poſt generalem ceſſionem ſubiiceretur [illegible] licet, aut alia ſimilis ex qua appareret de voluntate contrahentium, quod voluerit reſtringere & declarare [illegible] *legata in pr. ff. de ſupel. leg.* Bar. in [illegible] *ff. de fundo inſtr.* Aret. *in conſ.* 163. *Magnificus colum.* 1. nam

8 ceſſante [illegible] declaratione & reſtrictione per dictionem limitatiuam, genus non reſtringitur propter ſpecies enumeratas & ſequentes. Bart. & Doct. *in l.* [illegible] *ſi quis.* §. [illegible] Cor. *in conſ.* 4 *col.* 1 *lib.* 2. Dec. *in conſ.* 12 *col. fi. in conſ.* 3 [illegible] *ſi. ſed latius in conſ.* 69 *col.* 4 *in conſ.* 115 *col. fi.* & *in conſ.* 52 *colu.* 2. Et facit ratio, quia [illegible] ſpecificatio facta eſt ad fauorem ceſſionarii, quia maior pars bonorum erat circa immobilia, vt ſcirēt quæ & quāta forent, & [illegible] quantum poſſet agere de euictione, ergo non debet operari diminutionem *l. quod fauore.* [illegible] *C. de leg.* [illegible] *cum dilectus de ord. cogn.* & [illegible] ſpecificatio facta ad [illegible] non debet operari ad [illegible] [illegible] ſicut & ideo Socin. *in conſil.* 38 *colu.* 2 *poſt med. lib.* 1. Et ita in [illegible] caſu ſpecierum enumeratarum reſpondet Decr. *in conſilio* [illegible] *col.* 2 *poſt med.* neq[illegible] probat neceſſario [illegible] declaratali[illegible] bona, ergo [illegible] veniunt, quia [illegible] aliquotum [illegible] ſieri potuit quod in eis eſſet maturi ambiguitas, ergo ex ea declaratione fundamentum ſieri non pot[illegible] *C. de* [illegible] *præſentia de prob.* Et cum mens & intentio contrahentium fuerit vt cederentur omnia iura pertinentia ex dicto teſtamento, talis ceſſio generalis ſecundum eorum mentem omnem eſt accipienda, non obſtante dicta ſpecificatione. *l. in* [illegible] *in princip. ff. de* [illegible] *C.* [illegible] *ff. obl.* [illegible] late Moder. *in l.* 3. *C.* [illegible] *de*

9 *liberis præter.* ¶ Quinto, quando circa eandem perſonam ponuntur genus & ſpecies, ſpecies videtur poſita gratia demonſtrationis, non limitationis. *l. quæſitum.* §. [illegible] *ſi fundum. ff. de fun. inſtr.* Dec. *in reg.* [illegible] *colum.* 4. *ver.* 2 [illegible] *a regula procedit* [illegible] *de reg. iur.* ſed hic & ceſſio generalis & ſpecificatio bonorum cōtentur in perſonam ceſſionarii, ergo ſpecificatio ſtabit demonſtratiue, præſertim quia ſit ſpecificatio per dictionem, maxime, cuius natura eſt includere vtrumque caſum, & [illegible] in vtroque caſu ſtatuere. [illegible] maior ratio ſit in [illegible] *Ag. [illegible] ad leg. Aquil.* [illegible] *ff. de* [illegible] *maxime.* & ibi Gem. *de renu.* [illegible] Cor. *in conſi.* 119 *colum.* 5. & *in conſi.* 136 *col.* [illegible] *lib.* 2. [illegible] *de verb.* [illegible] *C.* [illegible] *lib.* quod verbum videtur tollere omnes difficultatem. Pro quo optime facit & quaſi in terminis [illegible] tibit Antu. de Bot. *in conſilio* 19 *quia hic agitur* [illegible] bi quando omne [illegible] enumerantur ſpecie[illegible]

10 cierum non reſtringit [illegible] vid[illegible] me, quæ [illegible] maxime [illegible] dubitabilem, ita q[illegible] [illegible] *in ſi.* [illegible] *ſed vlt.* [illegible] *ſed vltra Soc. addo Ge-*

min. *in conſ.* 6. vbi [illegible] comparatiue [illegible] cluſiue. i. demonſtr[illegible] nun quod exclud[illegible] *in verbo* [illegible] *conſilio* 141 *column. pen. ante med.* [illegible] par[illegible] præſupponens poſit[illegible] ¶ Sex[illegible] arguitur [illegible] na[illegible] 11 [illegible] non comprehendit [illegible] bi late Modern *de* [illegible] *non poteſt. de præ. ter.* [illegible] 472 *in* [illegible] *column.* 2. [illegible] duntur [illegible] bona [illegible] ſunt [illegible] *Inſt. de vſu. in princ.* ergo ſpecific[illegible] quia [illegible] cludit minora, ſed [illegible] ¶ Septim[illegible] poſitio ad omnia indiſtincte ext[illegible] *certa C. de tranſa.* & pactum verbis generalib. [illegible] ad omnia, etiam de quib. nu[illegible] agatur, [illegible] niſi ſpecies pr[illegible] poſſit, ſalua ratione [illegible] *emptor.* §. [illegible] & Doct. *ff. de pact.* Baldus & Doct. *in l. ſub prætextu ſpecierum* [illegible] late Alexand. *in conſi.* 11 *column* 2 *lib.* 1. *in con*[illegible] 2. [illegible] *conſil.* 1 *quod eſt repertum in conſi.* 48 *lib.* 6. Socin. *in conſi.* 1[illegible]4. *col.* [illegible] Aret. *in conſi.* [illegible] *ad fin.* Corn. *in conſi.* 6. *col.* 2 & [illegible] *lib.* 1 & *alibi ſæpe.* & hoc ne [illegible] verb. ſign. recedatur quorum cautū eſt, vt ſicut generaliter prolata ſunt, ita [illegible] tur. nam etiam [illegible] verba debent intel[illegible] late [illegible] nitiſplurium prop[illegible] *de ſent. ex* [illegible] *de transl. præl.* [illegible] Cald. *in conſi.* 1 *in rub. de conſtant.* & [illegible] *in conſ.* 2[illegible] [illegible] *in auth. ex teſtam. C. de colla.* Dec. [illegible] ba ceſſionis [illegible] reſtringi nullo modo poſſent ad bona immobil[illegible] *prima facie col.* 1. *lib.* 2. Corn. [illegible] *col.* 2. ideo vniuerſali[illegible] deto quod in iſta ceſſione [illegible] verba neceſſaria [illegible] omnia iura, deinde [illegible] aut aliqua quaui[illegible] modo arguitur ſic. [illegible] Verba [illegible] omnia comprehen[illegible] duntur quæ [illegible] poſſunt [illegible] *Poſtliminium ff. de vſufr.* [illegible] *C. de fidei* [illegible] tradit Soc[illegible] *col.* 2. *lib.* 3. & vlt. Soc. allego gl. & ſorte ſingu. *in l. quaſi ti* [illegible] *ff. de vſufr.* [illegible] nam text. dicit quod fructus ad fructuarium pertinet [illegible] bet latiſſimi, dicit gl. & de citiud[illegible] menta, quæ ma[illegible] ſubaudiri. Rurſus quando prohibetur vniuerſaliter [illegible] am ſimpliciter, non cenſetur prohibita ſucceſſio ab [illegible] licet ſucceſſerit [illegible] de familia. *l. cum pater.* §. [illegible] *communem intellectum* [illegible] & tamen ſi fiat prohibitio [illegible] niuerſalib. cenſetur p[illegible] bita talis ſucceſſio: late Socin. *in conſil.* 251 *col.* 4 *lib.* 2. Dec. [illegible] ſi verba ſimpliciter vniuer[illegible] omnia comprehendunt a fortiori quando ſuot geminata [illegible] quib. cōtrahentiū voluntas exuberantibus oſtenditur. *l. Balida.* *ff. ad Treb.* [illegible] *ff.* [illegible] *verb.* [illegible] ſtantibus talibus 14 verbis vniuerſalibus trahitur ceſſio ad iura etiam incognita & incognita, qu[illegible] ſufficit dictum cogni[illegible] in genere, quæ [illegible] no in genere [illegible] *ff. de teſta. milit.* Al[illegible] *de aq. hered.* & quod ceſſio facta verbis vniuerſali[illegible] ad iura etiam incognita & ignorata, eſt tex. [illegible] *ſtu*, vbi quæ ratione vniuerſalis trahitur etiam [illegible] qui b[illegible] cogitatum non [illegible] & licet pactum [illegible] plicatione [illegible] tamen ſed dolo [illegible] ſtante, manet eſſica[illegible] pactum [illegible] *ſub prætextu ſpecierum. C. de tranſa.* [illegible] vbi [illegible] ſecundum [illegible] trahitur etiam ad in[illegible] non [illegible] & ad incognita & ignorata, vt ibi [illegible] & Doct. [illegible] dit Bar. *in d. l. ſi de certa column.* 2. *ver.* [illegible] *in l. in comm.* [illegible] *colum.* 4. *poſt med.* [illegible] Corn. *in conſil.* 144 *column.* [illegible] *poſt med. libro* 3. Ergo multo magis [illegible] ceſſionis [illegible] tinebunt etiam ad bona mobilia non ſpecificata, & [illegible] e cogitatum aut [illegible] cogitari facil[illegible] potuit in ſpecie, ne [illegible] Poſtremo, [illegible] verba generali comprehend[illegible] na non ſpecifica[illegible] quæ alia n[illegible] comprehendum [illegible] *Dec. in conſilio* 287 *column* [illegible] verba debent [illegible] quid operentur, [illegible]

[illegible] ad caſum [illegible] quando alias [illegible] r. Bart *in l.* [illegible] *quis.* § *quæſitum.* [illegible] *quis cautio.* ſequitur Ale. *in conſ.* [illegible] 4. *Bra.* [illegible] *colum.* [illegible] *vlt. hoc clare patet.* Cur. [illegible] *in tracta. feu.* [illegible] *quæſt.* 2. & in renunciatione quod verba debeant intelligi [illegible] aliquid operentur, tradit Crim. *in conſ.* [illegible] *colum* 3. *circa fin. lib.* 2. [illegible] renunciatio vbi alias verba nihil operarentur. [illegible]
15 *licadit ff. quem. ſerui amitta* [illegible] *in conſ.* 98. *colum fin lib.* 1. idem [illegible] materia diſpenſationis [illegible] quia verba debent intelligi vt aliquid operentur Cald. *in conſ.* [illegible] *in fin. tit. qui filii ſint legitimi.* & fit extenſio de vna perſona ad aliam, quæ alias non fieret vt verba aliquid operentur *l. ſi ſtipulatus fuero per te non fieri. ff. de verb. oblig.* Rom. *in conſ.* 14. *Idem de iure.* & ſumitur argumentum à contrario [illegible] etiam ad correctionem iuris communis quando alias verba nihil operarentur *authen. ex teſtamento.* vbi Roman. & Mode. Inn. [illegible] *C. de colla.* Corn. *in conſ.* 91. *colum* [illegible] *lib.* 1. *in not in l.* [illegible] *ff. de off.* [illegible] § Quibus conſequens eſt concludere non oportere Ioannem R[illegible] inquietari ad illa bona mobilia. Et ita reſcribendum cenſui ſaluo [illegible] iudicio. Taurini. 12. Octobris. 1534. Aymo Crauetta à Saul. I. C.

S V M M A R I A.

1 *Teſtamentum per cancellationem* [illegible]
2 *Quomodo intelligi d*[illegible] *verba.* [illegible] *fundamentum.*
3 [illegible] *ingreſſum* [illegible] *teſtamentum.*
4 *Notarius* [illegible] *ſeruare teſtamentum cancellandum ad iuſſum teſtatoris.*

CONSILIVM CCXXVIII.

Pro Magnifico domino villæ Falletorum.

DIVINO ſubſidio ex corde poſtulato. In propoſito caſu dubia videtur concluſio firmata à Magnifico domino collaterali Vicomercato, quia videtur conſtitutus caſus extra terminos illius diſtinctionis quando teſtator dicit ſimpliciter ſe nolle primum teſtamentum valere, nõ reddita cauſa, & quando cauſa ſubiicitur, quia vult inteſtatus mori, nam hic teſtator coram ſeptem teſtib. mandauit teſtamentum [illegible] ſeu cancellari, ad cuius mandatum Notarius idipſum impleuit inducendo cruces inſtrumento, [illegible] in cancellatione Doc. communiter
1 concludunt per eam † teſtamentum [illegible] *l. cancellauerat.* [illegible] *l. fin. ff. de his, quæ in teſt. dele.* [illegible] Doct. *C. de teſt.* [illegible] Bart. *in l. in fraudem* § *ſicut. colum.* [illegible] *ff. de* [illegible] *l.* 1. § *per ff. de* [illegible] *l.* 2. § *ſi plura ff. quemadmo. teſta.* [illegible] Aret. *in conſ.* [illegible] *De efficacia. colum.* 3. *verſi. item præſuppoſito* [illegible] Alexand. *in conſ.* 159. *colum* 1 *lib.* 7. Bald. *in conſ.* 54. *Ad euidentiam colum* 2. *ver quoniam teſtator. lib.* 5. vbi dicit quod tunc ita cancellato teſtamento, deficit probatio. not. Alexand. *in l. fin colum* 5. *C. de leg.* Dec. *in regul. qui cum alio* § 1. *ff. de reg. iur.* In qua quidem cancellatione, illa diſtinctio an teſtatur dixerit ſe cancellare, quia volebat inteſtatus decedere, vel quia heredes indignos haberet, ad hoc tantum fit, vt intelligamus cui hereditas applicetur: nam ſi cancellatio [illegible] hoc vt inteſtatus decederet, ipſo iure teſtamentum [illegible], & tranſit hereditas ad heredes ab inteſtato: ſi vero, quia [illegible] heredes indignos habuit, transfertur in fiſcum, in dubio autem quando cancellatio fit ſimpliciter [illegible] expreſſa cauſa [illegible] inteſtatus decedere, aut heredes indignos putet, præſumitur facta gratia heredum venientium ab inteſtato ita Bart & Doct. *in l. l. noſtram* pulchre Oldrad. *in conſ.* 144. *Circa materiam.* vbi etiam quod ſi teſtator ſolum cancellet in partem, puta nomen [illegible] vnius heredis, in aliis non cancellatis [illegible] manet teſtamentum, & applicatur hereditas aliis coheredibus. [illegible] noſtro teſtator non dixit ſe nolle vt valeret primum teſtamentum, ac illud cancellari iuſſit, deinde ad eius votum fuit cancellatum per Notarium, ergo iſta cancellatio facti videtur teſtamentum omnino infirmare ſaltem ope exceptionis, quia illa cancellatio facti agit potentius, quam verbalis declaratio quando teſtator loquitur ſe nolle valere teſtamentum: & ratio vide-
2 tur poſſe reddi, nam † quando teſtatur dicit, nolo valere iſtud teſtamentum, videtur innuere quod ad alium modum teſtari velit, & primum teſtamentum mutare, ideo ſi aliud teſtamentũ non faciat, lex præſumit quod voluerit perſeuerare in priore voluntate, licet quandoque dixerit illa verba, nolo iſtud teſtamentum valere: prout Alex. pulchre declarat *in conſ.* 30. *in* 2. *dub. lib.* 3 *& in conſ* 159 *lib.* 7 *per totum.* ſed quando teſtator venit ad actũ facti, teſtamentum cancellandũ, non præſumitur quod ideo cancellauerit, quia vellet aliud teſtamentum implere, ſed quia omnino deliberatum habebat vt illud vacaret viribus, & potius [illegible] ex euentu [illegible] ab inteſtato: et [illegible] ex illa declaratione [illegible] cancellando, efficacior oſtẽditur teſtatoris [illegible] vt noluerit in omnem euentũ tale teſtamentũ valere, [illegible] aliud conſtruxiſſet ſcilicet, ſiue quia inteſtatus [illegible] decedere, etenim multo [illegible] ſunt facta ad oſtẽdendum [illegible] quæ ſint verba. hinc videmus [illegible] ex [illegible] ingreſſu monaſterii de quo teſtator non 3
[illegible] ingreſſos monaſterii agit potentius [illegible] reuocatione [illegible] *qua mul. C. de ſacroſ. eccl.* Dec. [illegible] *præſcrip. col.* 52. *poſt med ver. non obſtat quod* [illegible] *expreſſa diſpoſitio eſſet de proba.* [illegible] enim eſt [illegible] *l. ſi tamen.* § *et qui ff de* [illegible] *l.* 2. [illegible] Dec. *in* 2 *not de appell.* [illegible] *l. de quib. colum* 9. *ff. de legib & in l. non ſolum* § *morte colum* [illegible] *de ope. no. nun.* & [illegible] terminis cancellationis quæ fit a notario ex te[illegible] teſtamentum reuocari, [illegible] expreſſe Bald *in l.* 2 § *plura in vltimo verbo ff. quemadmod. teſt. am. aper.* nam dicit Bart [illegible] 4
licet reuocetur teſtam ex cancellatione N[illegible] ris, tamen non debet notarius te[illegible] ce latum ſeruare: & ita vult expreſſe Barto. [illegible] ob eiuſmodi cancellationem, [illegible] tradit Alexand *in conſilio* [illegible] 4. *colum.* 1 *verſi. mouer etiam lib* 1 Addo etiam quod in dubio præſumitur facta cancellatio de voluntate teſtatoris niſi eſſet teſtam. ad pias cauſas *alex. not in l. ſi* [illegible] *de teſt* Alexand *in conſ.* 1[illegible] 4. *colum.* 2. *lib.* 7. *& in conſ.* 14. *colum* 3 *ad fin. libr.* 71. § Quibus conſequens eſt colligere, in ambiguo eſſe [illegible] memoratam [illegible] quod ipſe infirmum puto potius quam validum [illegible] tamen cuiuſuis efficacius conſulentis: ſed quia conſultor intellexit conſilium pro eo facere, & quod [illegible] alterius domini cõſulentis venire recuſauit, conſilium hoc pro derelicto habuit, cautos igitur eſſe aduocatos oportet, vt non impoſturas ferant. Taurini, 24. Octobris. 1534. Aymo Crauetta à Sauiliano. I. V. D.

S V M M A R I A.

1 *Lege prohibitiua facta in odium prohibiti poteſt renunciari cum iuramento.*
2 *Donatio in concubinam conſetur prohibita, eadem ratione qua donatio inter virum & vxorem.*
3 *Clericus non poteſt donare concubinæ.*
4 *Non valet ſtatutum vel conſuetudo per quam datur materia delinquendi.*
5 *Publica honeſtatis ratione impeditur matrimonium.*
6 *Clericus propter honeſtatem non poteſt donare concubinæ.*
7 *Iuramentum nunquam operatur in præiudicium tertii, cuius fauore aliquid introducitur, ſed ſolum iurantis tantum.*
8 *Relicta concubina, cum qua matrimonium contrahi non poteſt, ad fiſcum videntur pertinere.*
9 *Iuramenti comes eſt, veritas, iuſtitia, & iudicium.*
10 *Iuramentum non ſeruatur niſi propter vinculum æquitatis.*
11 *Concubinatus eſt omnino de iure canonico prohibitus.*
12 *Concubinarii dicuntur turpes perſonæ.*
13 *Indefinita in materia legis æquipollet vniuerſali.*
14 *Donatio permittitur ex cauſa alienatorum in ſitos ſpurios de æquitate canonica.*
15 *Pars adlegans exceptionem tenetur illam probare.*
16 *Inhoneſtum eſt quod concubina alatur de bonis eccleſiaſticis.*
17 *In donatione male arguitur de vxore ad concubinam.*

CONSILIVM CCXXIX.

Pro Auguſtino Mora ex Bolengho.

DIVINO ſubſidio ex corde poſtulato. Quidam Clericus à Bolengho diſtrictus Hyporrediæ donauit quædam bona concubinæ ſuæ tam ex cauſa alimentorum quam propter copulam, illud ſcilicet cogitabat longa veneris obſequia ſoluere: clerico defuncto agit mulier contra Auguſti. Moram de Bolengho clerici heredem, vt bona donata præſtet. Iudex ordinarius coram quo cœptum iudicium eſt, condemnauit reum ad tradendum bona donata: ab ea ſententia fuit appellatum ad magnificum Senatum Taurini, quæritur modo de iuſtitia vel iniuſtitia illius ſententiæ. § Aduocati concubinæ dicunt valere donationem propter iuramentum quod ſeruari poteſt ſine diſpendio ſalutis æternæ. *cap. cum contingat. de iur* & in terminis donationis factæ concubinæ quod iuramento firmetur, allegant Rom. *in conſilio* 43. *in* 4. *dubio.* Rom. loquitur in donatione facta concubinæ per militem terreſtris militiæ, ergo idem videtur dicendum in milite cœleſtis militiæ, quia æquiparantur in hac materia: ſed vltra Rom. poterant † allegare, quod legi pro- 2
hibitium

[illegible]

3 fundata [illegible]

[illegible] plus [illegible] valere [illegible] ricus donator, te donare [illegible] niſi alter probent [illegible] donatori in actu [illegible] difficulta [illegible] ponder [illegible] mum de iuramento [illegible] quod uno [illegible] ſeruati non poſ [illegible] ſaluti æternæ [illegible] hac materia conſider [illegible] tes canonicos, quia tunc [illegible] lū æternæ [illegible] iuramentum contra bo [illegible] peccatum inducitur [illegible] peccatum veniale tantum [illegible]

4 [illegible] peccatum [illegible]

[illegible]

vxore, & quod [illegible] in concubinam debet confirmari iura-
11 mento ſicut donatio in vxorem: † ſed de iure cano. concubinatus eſt omnino prohibitus. *c. nemo. & c. dicat aliquis. 32. quæſt. 3.*
12 Bart *in l. 1. ff. de concubin.* † Imo dicuntur concubinarii turpes perſonæ, vt ſi frater inſtituat concubinarium, locum habeat querela, de qua *in l. fratris. C. de inoff. teſtam.* Decius *in conſilio 53.* Quod quidem ius canonicum debet ſeruari etiam in terris imperii, cum peccatum concernat, iuxta not. per Bart. *in l. priuilegia. C. de ſacroſan. eccleſ. per Canon. in c. 1. & 2. de ope. no. nun.* & in terminis concubinatus not. Alexan. *in conſi. 69. colu. 3. lib.* [illegible] Itaq; cum inſpecto iure canonico differat omnino concubina ab vxore, diſpoſita in vxore non habebunt locum in concubina: & ſic in totū tollitur fundamentum Rom. & miror quomodo potuerit argueree ex ratione iuris ciuilis ſublati & correcti in hac parte per ius canonicum: à lege autem correcta & abrogata non licet arguere. *l. fi. in princip. C. de edicto diui Adri. tollen.* & ita in ſimili quando lex canonica contradicit legi ciuili, arguit Anch. *in conſi. 411.* ¶ Tertio principaliter reſpondeo, quod Rom. loquitur in milite terreſtris militiæ, in quo concubinatus non eſt adeo odioſus vt in clerico, nam clericus priuatur beneficio propter concubinatum, *iuxta not. in c. ſicut. & in c. ſi autem. de cohab. cler. & mulier.* Deci. *in d. conſi. 132.* quod in milite terreſtri non reperitur. Item prohibetur in clerico non ſolum coitus cum concubina, ſed etiam matrimonium, quo matrimonio clericis interdictum eſt, exceptis Græcis *c. cum earum. 31. diſt. no. in c. omnes. de poeni. & remiſ.* [illegible] cus in milite: ideo non eſt bonum argumentum de vno ad alterum, cum habent diuerſam rationem. *l. fin. ff. de calum.* Papinia. exuli [illegible] *minor. cum ſimi.* ¶ Quarto reſpondeo, quod R. loquitur in concubina de iure ciuili, ſed iſta Ioanna etiam inſpecto iure ciuili, concubina eſſe non poterat, nam cum eſſet vidua, ſtuprum commiſit. *l. ſtuprum. ff. de adult.* quinimo punitur etiam ducens viduam ſtupratam in vxorem *l. mariti. §. quod ait lex. eod. tit.* conſequenter tali mulieri donari nihil poteſt, cum eius coitus damnetur de iure ciuili, vt in terminis tradit Bald. *in conſil. 457.* *Ad euidentiam præmitto quod concubinatus. libr. 5.* ex cuius dictis apparet deciſio præſentis dubitationis, & filii etiam nati ex tali muliere vidua ſtuprata dicuntur ſpurii, & æquiparantur natis ex adulterio, quando coitus eſt ac[illegible]ſabilis & punibilis de iure. *l. inter liberas. §. 1. ff. de adult.* Bartol. *in l. ſi adulterium cum inceſtu in princip. ff. eod. titul.* ſed coitus clerici cum vidua eſt accuſabilis & punibilis, imo & cum ſimplici concubina, vbi in laico non eſt accuſabilis aut punibilis, patet, quia priuatur clericus beneficio ob ſimplicem concubinatum, & quod natus ex coitu damnato & accuſabili dicatur ſpurius, no. Socin. *in l. Gallus. § quid ſi tantum 2. poſt med. ff. de lib. & poſt.* ¶ Non obſtat quod legi prohibitiuæ poteſt renunciari cum iuramento, quia illud procedit quando ſolum vertitur damnum [illegible] pecuniarium, non etiam animæ & ſalutis, vt hic, [illegible] delinquendi & luxuriandi. Ita declarat Baldus Nouel. *in loco ſi[illegible] alleg. & eſt in ſexta parte, priuilegio 21. in 12. limit.* ¶ Secundo reſpondeo, quod iſta prohibitio principaliter facta eſt ob publicam honeſtatem conſeruandum, & ad refrenandum vitium libidinis, maxime in clericis, quo caſu dicitur lex introducta ob publicam vtilitatem principaliter. *l. ius publicatus in fin. ff. ad leg.* [illegible] Bartol. *in l. quemadmodum. C. de agric. & conſi. lib. 11.* Sed legi introductæ ob publicam vtilitatem principaliter ad puniendum delicta & vitia refrenandum, renunciari non poteſt etiam cum iuramento. *l. conuenire. § ſi paciſcar.* vbi Iaſo. *in vlt. not. ff. de pac.* & idem Iaſ. *in l. 1. column. 2. verſicul. 3. adde ff. ſolut. matr.* & hac ratione videmus quod non poſſunt parentes renunciare legibus de ſpuriis loquentibus, & ſpuriis relinquere, etiam cum iuramento, quia illa prohibitio inducta fuit ob vtilitatem publicam principaliter, vt eo modo vitia parentum refrenarentur & cohiberentur. *l. fin. C. de natura. lib.* ¶ Amplius, etiam ſoboles legitima, conſentire non poteſt vt quid ſpuriis donetur aut relinquatur contra prohibitionem iuris, Angel. *in con. 123. colum. 2. verſic. vnde conſenſus.* Alex. *in conſ. 129. colu. 3. lib. 6.* Præterea, poſito & non conceſſo, talis prohibitio donandi concubinæ clericorum non pertineret ad vtilitatem publicam prout certe ſpectare arbitror, illud tamen negari non poteſt, inductam eſſe prohibitionem, quia maior caſtitas requiritur in clericis & aliis dignioribus perſonis quam in aliis inferioribus, & ratione vitandæ turpitudinis in perſonis tam claris. *arg. l. ſi qua illuſtris. C. ad Orphitia.* vbi mater illuſtris non ſuccedit ſpurio, quia in ea maior requiritur caſtitas, ratione qualitatis & excellentiæ perſonæ: & ita iſtam rationem in milite ſeculari per illā legem conſideraret Iac. de Puteo *inter conſil.* Calca. *in conſil. 61. colu. 1.* idem in effectu voluit Calca. *in conſil 59. colu. 3.* vbi quod talis prohibitio donandi concubinæ inducta eſt ratione vitandæ turpitudinis, ergo in tali prohibitione iuramentum operari non debet iamquam contra bonos mores canonicos & inductiuum peccati & turpitudinis. Etenim ſi [illegible] prohibitio donationis veſtigium [illegible] turpitudo, ergo neceſſe eſt dicere quod eius permiſſio ſit [illegible]ctiua turpitudinis & peccati, arguendo a contrariis, vt cont[illegible] riorum eadem [illegible] diſciplina *l.* [illegible] *ff. de his qui ſunt ſui vel alie. iur.* [illegible] *in ſimilib.* Et ſi tam ſpuriis vt [illegible] libidinantibus, ſicq; [illegible] ſetatione dignis. *l. legem C. de natur. lib. cap.* [illegible] parent[illegible] men relinquere non poſſunt, mul[illegible] in [illegible] linquere eorum ma[illegible] ſeu [illegible] libus mulier[illegible] in quibus ipſis vinum arguitur grauius & p[illegible], cui [illegible] tenetior ſit actus in cauſa quam in [illegible] *l. 129. Statuta Piſana. colum. fin. libr. 1.* alle[illegible] tex *in l. digna vox* [illegible] de [illegible]. Ideo cauſa ſecunda tantum operatur quantum [illegible] prima imprimitur *l. peto §. prædium ff. de leg. 2.* Socin. [illegible] *cond. & dem.* Confirmatur hoc per text. *in* [illegible] *C. d. natur.* [illegible] concubinæ plus relinqui non poteſt quam [illegible] bus, ſic ergo filiis nihil relinqui poſſet quia natis ex [illegible] minato, multo minus dicendum eſt relinqui poſſe [illegible] longe odioſiori. Et in terminis [illegible] *l. inſi.* ne delinquens ſit melioris [illegible] quens. Iam ſi huic Ioannæ vidu[illegible] potuiſſet, etiam inſpecto iure ciuil[illegible] poterat, ſecundum Bald. *in d. conſil. 457.* [illegible] clerico: ¶ Tertio reſpondeo, quod [illegible] mulieri pertineant ad heredes legitim[illegible] *natu. lib.* iuramentum clerici [illegible] præiudicium ipſorum, vt [illegible] concubinæ per militem ad [illegible] mulier cum qua matrimonium [illegible] *dum. & l. ſeq. ff. de his quæ vt indign.* talis [illegible] heredes clerici *l. his conſequenter. §. 1. ff. famil.* [illegible] *78. colum. 2. poſt med. lib. 4.* Ad aliud fundamentum de alimentis, reſpondeo, quod Doct. indiſtincte dicunt clericum concubinæ donare non poſſe: ergo nec nos diſtinguere debemus *l. de pr*[illegible] *ff. de publ.* & † indefinita in materia legis æquipollet vniuerſali, 13
iuxta doct. Bar. *in l. ſi pluribus ff. de leg. 2.* & ſic ali concubinæ donari nihil poteſt ex quauis cauſa. ¶ † Secundo ſpecialiter per 14
nutritur donatio ex cauſa alimentorū in filios ſpurios de æquitate canonica vt ſupra dictum eſt, quæ æquitas ceſſat in concubina in quam nō cadit ratio naturalis coniunctionis ſicut in filiis, igitur cum ſit diuerſa ratio, non procedit argumentum de filiis ſpuriis ad concubinam *l. ſi ff. de calum. l. naturaliter. §. nihil commune. ff. de acq. poſſ.* nam lex canonica reſpicien[s] ad æquitatem naturalem, patrem obligat ad alimenta ſpurii in quo ceſſat vitium & culpa, ſed non æque reperitur ciuitum in fauorem concubinæ olentiſſimæ & execrabilis, & quā ege[ſ]tate l[i]bo[rare] pro tantalis nequitia reip. intereſt. *l. bona fides ff. depoſi.* ¶ Tertio reſpondeo, quod reus contiennis habet regul[am] [illegible] ſcilicet clericum concubinæ donare non poſſe, † pars igitur allegan[s] ex- 15
ceptionem tenetur illam probare. *l. 1. & 2. ff. de excep.* ſed nullam adduc[i]t legē neq; authoritatem per quam probetur exceptio, igitur regulæ ſtandum eſt *gl. in l. omnis definitio ff. de reg. iur.* Bart. *in l. quoties ff. ſi quis caut.* & erubeſcimus cō ſine leg[e] loquimur. *§. conſiderem. in auth. de trien. & ſemi.* ¶ Quarto reſpōdeo, quod ratio quæ militat in proprietate ne detur materia delinquendi, & fiat cōtra dignitatem & honeſtatem Eccl. militat etiā in † alimentis, 16
& inhoneſtum foret quod eiuſmodi concubinę de bonis Eccl. alerentur. ¶ Non obſt. dictū Bal. *in conſ ſupra allegato.* quia ad illud poſſunt accōmodari reſponſiones traditæ ad dictum Rom. Secundo reſpondeo quod ſi dictum Baldi eſſet verū, ſcilicet quod prohibeatur donatio in concubinam eadem ratione qua inter coniuges. ſequeretur quod prohibita eſſet donatio ad omnes concubinas ſicut generaliter prohibetur donatio inter coniuges & tamen videmus iſtā prohibitionem ſolum limitatam in iuris militibus cœleſtis vel terreſtris militiæ, ideo ratio [illegible] non concludit cū non ſit generalis, ſed melior [illegible] ſupra alle[ga]te. ¶ Tertio reſpondeo quod tex. *in d. l.* [illegible] *ff. de leg. 3.* volens, quod concubina parum d[illegible] ret, eſtringitur ad terminos in quib[us] loq[u]itur, vale[illegible] *in l. 1. colu. 2. poſt med. verſ. & tex. C. vnde vir & vxor.* ergo † [illegible] ne male arguitur de vxore ad concubinam, etiam [illegible]

in vxorem permiſſa ſit donatio, multo minus ubi prohibetur. Poſtremo, ne rationibus tam efficacibus authoritas deſit, quod donatio clerici in concubinam iuramento non firmetur, contra Rom. voluit Ripa *in l. miles. in fin. prin. ff. de re iud.* ¶ Ex quibus concludo male fuiſſe pronunciatum, & bene appellatum. Thaurini 15. Octobris MDXXXIIII.

SVMMARIA.

1 *Promiſſio tutoris videtur neceſſaria defenſionis, quoties decretum eſt neceſſarium.*
2 *In correſpectiuis ſi vnum ceſſat, ceſſat & alterum.*
3 *Sublata forma ceſſat formatum.*
4 *Tutor teſtamentarius etiam promiſſione obligatur adulto, ſi quid male geſſerit.*

CONSILIVM CCXXX.

In caſu decreti cuiuſdam promiſſionis in tutela.

DIVINO ſubſidio ex corde poſtulato. Text. *in l. ſi. § omnem. C. de admi. tuto.* non videtur habere locum in caſu noſtro, nam mandat illam defenſionem promitti ante creationem tutoris, ergo debet intelligi aut in tutore legitimo qui ſaltem in confirmatione largo modo dicitur creari, aut in tutore datiuo qui proprie dicitur creari, aut in teſtamentario quando eget decreto aut confirmatione: nam in tutore teſtamentario confirmatione non egente, verba tex. non conueniunt, ſi quidem oporteret eam promiſſionem haberi ante mortem teſtatoris & ſub ipſum teſtamenti tempus, quod eſt abſurdum, quia teſtamentum demum efficax eſt mortuo teſtatore, quo ſuperſtite fruſtra fit promiſſio *iuxta Marthe. de celebra miſſ.* ¶ Secundo ex tex. *in §. fin. in auth. vt hi qui obl. ſe perhi. &c.* mandat enim modo promiſſionem fieri de tempore decreti, quando tutela ſeu eius adminiſtratio
1 decernitur, † itaq; toties videtur neceſſaria promiſſio defenſionis, quoties decretum eſt neceſſarium, nam vbicunq; aliquid diſponitur aliquo præſuppoſito, ceſſante præſuppoſito ceſſat diſpoſitio Ia. Bu. Sal. & Ful. *in l. cum antiqua. C. de ſer. fug.* Ro. con. 86. *Statum imponimus.* Igitur lex præcepit de iſta promiſſione tempore decreti præſupponendo neceſſitatem decreti, plane ſi decretū nullum requiritur aut ſuperuacuum eſt, ipſa promiſſio conſiderari non poteſt, nam lex voluit quod tutor promitteret apud acta ſeu ipſi iudici vt dicit tex. *in d. § omnem.* pōderando verbum geſtis, ſecundum explanationem gl. & magis perſpicue tex. *in d. § fin. in auth. vt hi qui obli.* & ſic iſta promiſſio correſpectiuatur ad ipſum decretum, quia noluit lex decerni adminiſtrationem per iudicem niſi tutor ad eum modum cautionem præſtitet: † in
2 correſpectiuis autem ſi vnum ceſſat, ceſſat & alterum *l. etiam §. ex cauſa ff. de minor. l. ſilio §. matri l. alumnus. § Seia. ff. de alim. leg. l. fin. ff. de acceptil. l. Clem. § 1. ff. de here. inſtit.* Alex. *in con.* 111. *col.* 3. *lib.* 1. Iaſ. *in l.* Lucius *colum.* 8. *ff. de vulg. & in l. teſtamento. colum penult. ca. ſi.* [illegible] *de te* [illegible]. ergo ſublato decreto & ipſam auferri oportet promiſſionem ad decretum relatam & correſpectiuam. ¶ Tertio lex voluit huiuſmodi promiſſionem haberi dum celebratur decretum, *vt d. § fi. & § omnem.* ergo illud tempus cenſetur introductum pro forma, tempus enim quo quid impleri oportet, pertinet ad formā, *auth. quæ ſupp. C. de precib. Imp. offer.* & ibi Iaſo. in 4. not. idem Iaſo. *in l. pupillaris. in 2. no. ff. de vulg. in l. qui Romæ § Callimachus. in 5. no. ff. de verb. oblig. & l. 1. § eiſt. colum. 1. ff. de eden.* Dec. *in l. cauſa. column.* [illegible] *med. de offi. deleg.* ergo ſublato decreto tollitur & neceſſitas promiſſio-
3 nis quæ impleri non poteſt ad formā ſpecificam, † ſublata enim forma ceſſat formatum, *l. cum ceſſante. de app.* & ſublato antecedenti nulla ſunt conſequentia *l. vel & her. § præter. ff. de pœ*[illegible]. & ibi Bar. *circum finem lib.* ¶ Quarto, cum lex ſolum obliget tutorem ad eam promiſſionem quoties decernitur adminiſtratio à iudice, non eſt extendenda ea obligatio legalis ſupra legis diſpoſitionem *argu. l. quicquid aſtringendæ ff. de verb. oblig.* & cum lex hoc non dicat, nec nos dicere debemus *l. ſi ſeruum. § non dixit prætor. ff. de acqui. here.* ſciuiſſet enim lex hoc exprimere ſi voluiſſet. [illegible] § *fin autem ad deficientem C. de cadu. toll. & inter corporalia. de translat. prælat.* ¶ Quinimo iſtud videtur probari ex gloſſ. *in l. fin. § ſiquidem autem verſicul. ad curationem C. de cura fur.* dum text. dicit quod licet curatori furioſo dato in teſtamento remittatur ſatiſdatio debet tamen curator apud acta promittere defenſionem furioſi antequam accedat ad curationem, dicit gloſſ. id eſt, quia curator in teſtamento perfecte dari non poteſt, ideo tunc [illegible] decreto iudicis [illegible] eſt in tutore qui teſtamento perfecte datur. ¶ Sexto probari videtur iſta concluſio per

text. *in l. teſtamento. ff. de teſta. tu. l. 3. & l. fin. ff. de conf.* [illegible] *§* [illegible] *tiquitas. C. de cur.* [illegible] *& l. 1. Inſt. de ſat. tu.* vbi [illegible] teſtamentario remittitur onus ſatiſdandi [illegible] ſtatore probata eſt, ergo [illegible] fendendi, quia ſatiſdatio venit in conſequentiam [illegible] promiſſionis, & a quo mouetur conſequens [illegible] & antecedens Bald. *in l. eum ventum tam* [illegible] *4. C. de F*[illegible] primo iſtud ſubtilius [illegible] videtur prohibita [illegible] *dem. C. de cur. fur. & in l. de creationibus. C. de* [illegible] quod licet curatori furioſi teſtamentario [illegible] datio, tamen tenetur promittere defenſionem [illegible] go tex. quod nisi hoc declaratum & exp. eſt [illegible] remiſſione ſatiſdationis remiſſa etiam cenſetur [illegible] defenſionis, ideo text. *in d. l. teſtamento ff.* [illegible] *de ſatiſ. tu.* in tutore teſtamentario ſimpliciter [illegible] ſe ſatiſdationem, quaſi ex hoc ſatis dicatur [illegible] defenſionis. ¶ Octauo oſtendo quod iſta prom[illegible] decreti neceſſaria ex quo ſatiſdare non tenetur [illegible] 4
ne promiſſione tutor teſtamentarius [illegible] obligatur adulto *in l. ff. de tute. & ratio. diſtrahen. & in l.* [illegible] *C. de admi. tuto.* imo punitur tutor male adminiſtrans [illegible] *tionem l. meor. ff. de tutel.* Anch. *in conſ.* 330. *colum. fin.* non est [illegible] eſt promiſſionem fieri ratione hypothecæ bonorum, [illegible] na tutorum ſunt ipſo iure obligata pro adminiſtratione [illegible] vbi Bart. *C. de admi. tut.* & ſtatim ſunt obligata ab initio [illegible] ſtrationis ſecundum Bar. Soc. *in conſ.* 61. *in 2. dubio. lib.* [illegible] bona ſecundi mariti ſunt hypothecata pro mala adminiſtratione vxoris quæ tranſiuit ad ſecunda vota, non tamen [illegible] *l. 2. C. quando mul. tut. offi. fung. po.* Soc. *in con.* 26 [illegible] ¶ Nono pondero rationem quare ſatiſdatio remittitur [illegible] teſtamentario, quia eius fides à teſtatore probata eſt [illegible] tamen non ut promiſſionem defenſionis ſiue [illegible] ſatiſdationem ergo idem ius in vtroq; caſu eſſe debet [illegible] *leg. Apud* [illegible] *ff. de ver. oblig.* imo maior ratio videtur eſſe [illegible] miſſionem [illegible] promiſſionis quam ſatiſdationis, quia [illegible] magis præiudicialis quam remiſſio promiſſionis, nam [illegible] netur promiſſio, adhuc tamen tutor cui remittitur, manet [illegible] gatus, & bona eius obligata pro adminiſtratione. ſecus [illegible] datione, quia nullus pro ſatiſdatione [illegible] obligatur [illegible] ſi remittitur quod eſt plus multo magis remiſſum [illegible] bet quod eſt minus. *re*[illegible] *cuilibet. de reg. iur. lib. 6. l. non omnia ver. occidere.* vbi [illegible] *ff. de adul. cum ſimil.* quæ la. not. *in l. non* [illegible] *in 2. not. ff. de in lit. iur. endo.* ¶ Decimo iſta ratio remiſſionis ſatiſdationis eſt finalis, quia niſi adeſſet præſumptio fidei à teſtatore probatæ, non remitteretur ſatiſdatio, *iuxta not. in l. 1. § fi.* [illegible] Cor. *in con.* 101. *col. fin. lib.* 1. Soc. *in conſi.* 26. *col. fin. lib.* 3. [illegible] quando ratio eſt finalis, ipſa diſponit de lege eam extendendo, ampliando & reſtringendo. Bal. *in c. 1. § ſi de cedendo qui ſi*[illegible] *dar. pro.* [illegible] C[illegible] *con.* 227 *ad fin. libr. 2. in conſi.* 90 *col.* 3 *lib. 3. in con.* 121. *col.* [illegible] *col. 2. eo. lib. 3. & in conſil. 53. column. pen. libr. 4.* conſequenter [illegible] finalis militans & quidem multo magis in remiſſione promiſſionis de defendendo, legem extendet ex arbitrio ad iſtam promiſſionem diſponendo de lege. ¶ Præmiſſa licet videantur efficacia & fortiter vrgere, tamen non auſim ita omnino reſpondere, quia contrarium in terminis tenet Paul. de C[illegible] *in con.* 3 *Poſtquam iſti tuta. col. 2. ver. licet igitur. lib. 1.* Berb. *inter conſilia* C[illegible] *in conſi.* 67. *colu.* 1[illegible]. *poſt med. per tex. in d. § f. vt hi qui obli.* ſed tamen ceſſat præmiſſa difficultas in caſu noſtro in quo [illegible] eſt poteſtas tutori adminiſtrandi citra omnem confirmationem & confectionem inuentarii, extra omnem actum iud[illegible] amplius data fuit libera & plena poteſtas ac baylia circa regimē, denique liberauit à redditione rationū, ita teſtator exhibuit effectum immodicū erga tutorem in principio, medio & fine, nā confirmatio & actus iudicialis pertinent ad initium, [illegible] ad medium, redditio rationum ad finem: plane non amb[illegible] eſt poſſe teſtatorem permittere tutori poteſtatem adminiſtrandi non accedente confirmatione vel decreto, vt actu [illegible] Bar. *in l. legitimo. col. 1. ver.* [illegible] *& ibi* [illegible] *tutor in conſ.* 103. Cor. *in conſ.* [illegible] *6 col. 1. lib.* 3 quæ volunt [illegible] tutor oſtenditur ex [illegible] verbis [illegible] gem [illegible] nam poteſtatem, bayliam ſine confirmatione, ſine a[illegible] licet enim non libere adminiſtraret ſi promiſſione [illegible] neretur, ob ea quæ de efficacia [illegible] libe[illegible] *in l. 1. C. de ſacr.* [illegible] Iun. *in tom.* 2. *in tertia colu.* [illegible] 267. *column. 3. circa med. ver.* [illegible] *ad præ*[illegible] *lib. 4.* [illegible]

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ſeruit remiſſa cautio [illegible] ctuario quando permittitur vt vſufructu liberè gaudere ac frui poſſit. & alibi ſæpè Doct. ¶ Ad hæc ſi aliud deſendamus, non plena eſſet poteſtas adminiſtrandi: ex his quæ notantur per Bartol. *de plena adminiſtratione l. inter bonorum. ff. de adminiſt. tuto. in l. 1. ſolemus. fin. de offic. procu. Caſ. & in l. procurator cui libera. ff. de procur.* iam ſi decretum eſſet neceſſarium, non liberè tutor fieret ab actu iudiciali ad voluntatem teſtatoris, *contra § diſponat in auth. de nupt. & l. 1. C. de ſacroſanct. Eccleſ.* pleraq; ſi vellem cumulare poſſem, quæ geminatorum verborum efficaciam ageret, ſed abunda putaui apud Senatum vndiq; conſultiſſimum, ergo ſi teſtator condonauit neceſſitatem decreti, cenſetur remiſiſſe omnia quæ ex eo ſequuntur. *l. ſi duo patroni. § Iulian. & l. ex duobus § ſi quis ur. tuerit. ff. de iureiur. Iaſ. in [illegible] tandum. column. 12. ad fin. ff. de verb. oblig.* ¶ Quibus conſequenter videtur, text. *in § ocancm.* non obtinere quoties decretum aut confirmatio tutelæ non deſiderantur. Ex præmiſſis concludo non benè fuiſſe pronunciatum per Iudicem a quo, ac ti eſſe nulli ob defectum promiſſionis deſendendo. Taurini 2. Octobris. MDXXXIV.

Svmmaria.

1 *Statutum quo cauetur vt ſoluatur certa quantitas rerum petitarum pro ſigillo, ſi ſit cauſa vel generalis, vel particularis, intelligi debet de rebus æſtimabilibus.*

2 *Redditio rationum duo continet, computum dare, & reliqua reſtituere.*

3 *Incertum & nullum æquiparantur.*

4 *Extenſio fit ſecundum qualitatem & naturam extenſi.*

5 *Decretum debet intelligi prout poſſibile eſt, et iuri adaptari.*

6 *Agens ad redditionem rationum, agere debet ſecundum naturam illius actionis.*

7 *Sententia interpretatur ſecundum naturam actus ſuper quo prolata eſt, etiam verba impropriando.*

8 *Ante factam liquidationem nulla debetur gabella ſigilli.*

9 *Stante ſtatuto vt contra inſtrumentum nulla exceptio opponi poſſit, opponi poteſt quod non eſt liquidum.*

10 *Clauſula appoſita ad vnum finem, non debet trahi ad alium finem.*

11 *Quando fit relatio vnius ad alterum qualitates vtriuſq; diſpoſitionis æquales debent intelligi determinata.*

12 *Vnus actus recipit interpretationem à verbis prolatis in alio actu.*

13 *Promiſſio facta ſine cauſa præſumitur facta ex cauſa contractus præcedentis.*

14 *Quando agitur ad redditionem rationum in profectione cauſa debent deduci certa res adminiſtrata vt ſententia ferri poſſit*

15 *Verba generalia ſtatuti reſtringuntur ne correctio inducatur iuris communis.*

16 *Quando aliquid fit contemplatione alterius inſpicitur illud cuius contemplatione fit actus.*

17 *Gabella eſt res odioſa*

CONSILIVM CCXXXI.

Pro nobili Ioanne Girandi Burgenſe Chamberiaci.

DIVINO ſubſidio ex corde poſtulatò. Circa præſentem conſultationem, in qua agitur de explicatione decreti ducalis editi ſuper quantitate ſoluenda pro iudiciis ſeu ſententiis definitiuis, quo cauetur, vt ſoluatur certa quantitas rerum petitarum pro ſigillo, ſiue acta fuerit cauſa particularis vel generalis aut vniuerſalis, videndum eſt, quia actor egit contra heredes adminiſtratoris ad redditionem rationum, deinde in quadam parcella poſt libellum ſubiecta expreſſit multa bona in ſpecie, an obligetur lata ſententia abſolutoria contra eum ad ſolutionem ſigilli, conſiderato valore ipſorum bonorum, aut teneatur tantum quaſi egiſſet ad aliquod incertum? ¶ Videretur dicendum prima fronte quod teneatur ſecundum valorem bonorum. nam etiam is qui petit rationes reddi adminiſtratorum, poteſt ſpecificè & expreſſè petere aliquas res certas, quas eſſe liquidas patet *l. 1.* & ibi Bart. *C. ſi aduer. rem iud.* Alex. *in conſ. 170. col. 2. lib. 2. & in conſil. 80. column. 1. lib. 4.* igitur cum in cauſa fuerint expreſſæ multæ res certæ & particulariter, videtur ſoluenda quantitas ſigilli ſecundum æſtimationem talium rerum. Bald. *in l. generaliter. C. de Epiſc. & Cler.* Bart. & Doct. *in l. 4. § prætor verſ. totiens. ff. de dam. infec.* Sed præmiſſis non obſtantibus puto concludendum in fauorem actoris, quod non obligetur conſiderato valore

1 ipſorum bonorum ſequentib. fundamentis. ¶ Primò, quia tale ſtatutum ſeu decretum domini debet intelligi de reb. æſtimabilibus. Bart. *in d. l. 4. in § prætor vt. ad fin. ff. de dam. infect. & in l. vtactum. in princ. ff. de admin. tu.* Alex. *in conſ. 57. col. 2. lib. 2.* ſed quando agitur vt reddatur ratio adminiſtratorū, cauſa cenſetur inæſtimabilis, nec æſtimari poteſt conſiderato principio & fine cauſæ, nam à principio non petitur præciſè vt detur vel reſtituatur certum quid, ſed tantum in genere vt reddatur ratio. ſimiliter non

2 condemnatur conuentus ad dandum vel reſtituendum certū quid, ſed tantum vt reddat rationem quando aliud certum nō apparet quod factum dicatur eſſe incertum, cum per tempus litis ignoretur quantum ſit vel dandum vel reddendum, † nam 2 redditio rationum duo continet, computum dare, & reliqua reſtituere. *l. quamuis. & l. cum ſeruus ff. de condit. & demon. l. ſi ita fuerit. §. quæro. ff. de manumiſſ. l. pure. in fin. ff. de fideicom. liber. cum ſimil.* ideò hoc factum reddendæ rationis aliter æſtimari non poteſt, quantum videlicet conuentus præſtare teneatur, aut actor petat, niſi computo dato & ratione reddita: quæ ſi non reddatur aut reddi non debeat, omnis ceſſat certitudo & æſtimatio, ergo æſtimatio habendi propoſita neceſſitate reddendæ rationis, ceſſante [illegible] æſtimatio. *gloſ. in [illegible] mancip. C. de ſer. fugi.* Rom. *in ſin. 18 [illegible] conſtitutus col. 1. de reſcript. in conſ. 201 col. 1. & alibi ſæpe* antecedenti deſtructo nullam eſt dare conſequens. *[illegible] ff. de offi. cui l. ſed & hic § prætor. ff. de procur. l. quod per manus [illegible] liberorum. l. [illegible] homo mortuus. [illegible] ff. de verb. obl. [illegible] C. de furtu. gl. c. Ephrſis 43 diſt.* igitur factum [illegible] datur, dicitur incertum, quia [illegible] quantum deberi poſſit ante redditam rationem, † ſed incertum & nullum æqui- 3
parantur. *l. duo ſunt Titij ff. de teſtam. tut.* [illegible] quemlibet [illegible] certa non recipit æſtimationem. ¶ Secundo quod decretum domini loquens de iudiciis generalibus ſeu vniuerſalibus debeat intelligi quando petuntur certæ res & æſtimabiles, probatur, quia loquitur extenſiuè extendendo dicta in iudiciis particularibus ad iudicia generalia ſeu vniuerſalia, ſed † extenſio intelligitur 4
facta ſecundum qualitatem & naturam extenſi. *leg. cum ſtipulatus ſim mihi a Proculo ff. de verb. obl. l. C. loca.* Bart. *in l. 1. § & poſt operis. ff. de ope. no. nu.* facit text. *in l. ſed ſi manente ff. de prec. & in cap. Eccleſia l. 1. & lite pendente.* ſed decretum in iudiciis particularib. loquitur quando petuntur certa quantitas vel res inæſtimabiles, ad eundem modum exaudienda ſunt verba decreti loquentis de iudiciis generalibus vel vniuerſalibus. ¶ Rurſus, decretum debet in- 5
telligi prout poſſibile eſt ipſum adaptari. Alex. *in conſ. 81 col. 2. lib. 6.* poſt Bart. *in l. 1. § lex Falc. ff. ad leg. Falc.* vbi ſtante ſtatuto quod litigantes teneantur compromittere in communes conſanguineos, tale ſtatutum non habet locum in extraneis, qui non habent communes conſanguineos, ſed ſolum habet locum in coniunctis habentibus communes conſanguineos prout poſſibile eſt adaptari verba ſtatuti, igitur dum ſtatutum ſeu decretū loquitur de iudiciis generalibus & vniuerſalib. debet intelligi quando in eis conſtat de certis rebus aut quantitatib. facta probatione aut liquidatione prout poſſibile eſt, quę liquidatio fieri non poteſt in redditione rationū, ſublato antecedenti & ſententia dicta abſolutoriè, quod quis rationes reddere non teneatur. ¶ Tertiò quando agitur ad redditionem rationum, in ſuſpenſo & in dubio eſt quantum debeatur, quo ad vſq; reddita ſit ratio, & conſtet quanta ſint reliqua, ergo emolumentum ſigilli non debetur ante liquidationem & declarationem reliquorū, & ſi reliqua declarentur, debebatur emolumentū ſigilli ſecundum ipſam declarationem ſecutam, ſi autem nulla fiat declaratio, nullum debebitur emolumentum. Soc. pulchrè *in conſ. 76. viſa facti contingentia & ſtatutis col. 4 verſ. confirmatur, nam gabella lib. 1.* vbi latè confirmat, & vltra Soc. conſtituo, nam præcedentia actus nō debent poſſe plus operari quā ipſe actus ſi ſecutus eſſet. *l. Iulian. verum debitore. ff. de cond. ind. lib.* vbi Iaſ. *in princ. no.* ſed in caſu noſtro ſecuta ſententia abſolutoria quod reus non teneatur rationem reddere, nihil ab eo peti poteſt, conſequenter ſigilli vtilitas nulla debetur, ideò videretur abſurdū quod pendente hoc dubio euentu an teneatur reddere rationem vel non, debeatur commodum ſigilli, quod non deberetur reo abſoluto, & ſic abſurdiſſimū fieret quod plus operetur pendentia actus, quā ipſius actus certitudo & declaratio. ¶ † Quartò, ille qui agit ad red- 6
ditionē rationum, agit ſecundum naturam illius actionis, id eſt, quod ſi ipſe agens inuicē aliquid debeat adminiſtratori, compenſatio habeatur, & reliqua tantum reſtituantur. *l. cum ſeruus ff. de cond. & demonſt. arg. l. ſi ſtipulatus. ff. de vſur.* nam omnis generalitas intelligitur & reſtringitur ſecundum naturam actus cui adiicitur. *l. ſi in [illegible] Bald. in l. non. ant. igitur in fin. ff. de leg. in rub. C. de contrah. emp. in q. q. & in l. a procur. C. man.* [illegible] dictum in *ex literis d. ext. patr.* not. Alex *in conſ.* [illegible] *ad fin. lib. 7.* [illegible] *col. 2. ff. ſi cer. pet.* nam etiam ſententia [illegible] interpretatur ſecundū 7
naturam actus ſuper quo prolata eſt, etiam verba improprian-
do. *gl. in l. & puto ff.* [illegible]. Bal. *in l. fin. C.* [illegible] Soc. *in co.* [illegible] *221. col. fin. lib. 1.* Corn. [illegible] *lib. 4.* à fortiori idem dicendum

[illegible]

8 [illegible]

9 [illegible]

10 quod clauſula [illegible] non debet [illegible] ad [illegible]

[illegible]

lib.1. & ſi aliter diceremus, ſequeretur quod eiſdem bonis voluiſſet actor inferre duplex iudicium diuerſæ naturæ & qualitatis, quod expreſſe non potuiſſet. *l.1. Cod. de ſer. non ſoluta C. de eden.* quæ diuerſitas oſtenditur, nam agendo vt reddatur ratio, non petit præciſe ipſa bona, ſed reliquorum tantum reſtitutionem, conſentiendo ad actum compenſationis, ſi adminiſtratori ad aliquid obligetur. Item conſentiendo detrahi de bonis expreſſis in parcella, ſi quæ forte conſumpta aut alienata ſunt ex cauſa legitima, planè præciſe petendo ipſa bona, expreſſe remittitur & reluctatur ad compenſationem, & omnem deductionem ſeu detractionē, ideòque non eſt præſumendum voluiſſe actorem duo diuerſa & contraria remedia proponere, quod iure prohibetur, & in quo poteſtatem non habet. *l. quanquam. de ritu nup.* [illegible] *text. in c. à nobis de ſent. excommun.* Bartol *in l. ſi quis ſub conditione. ad fin. ff. de condit. inſtit.* facit idem Bartol *in l. eo ſcilicet. § inſtituto. ff. de leg. 2.* Alex. *in conſ. 95. lib. 4.* & *in conſ. 10. ad ſin. lib. 7.* [illegible] *ſimilibus.*

14 ¶ Sexto pro reſponſione conſideretur, quod, quando agitur ad redditionem rationum in proſecutione cauſæ, debent deduci & probari certæ res & quantitates adminiſtratæ, vt ſententia ferri poſſit ſuper quibus, ſeu de quibus [illegible] ratio reddi debebat. Socin. *in conſ. 24. col. 12. verſ. quinimo licet procedat libellus lib. 1.* ergo illa petitio & ſpecificatio facta in rotulo debet cenſeri facta ad modum neceſſarium, id eſt, vt in proſecutione iudicii generalis probatio requiſita & neceſſaria fieret. Præſumitur enim quis feciſſe illud eo modo quo tenebatur ex forma actionis. *arg. l. fin. C. de alt. pupil. præſtan.* Bartol. *in l. cum ſeruus. ff. de verb. obl. in l.* [illegible] *ff. de verb. obl.* & *in l. 2. ff. de cond.* & *dem.* Idem præſumitur quod factum ob eam cauſam quam fieri debebat. *leg. ſi cum dotem. § ſi pater. ff. ſol. matr.* Bald. *in l. fin. col. 1. verſ.* [illegible] *quod præſumatur C. de ſent. quæ ſine cer. quant.* & *in l. nulla. C. de iure dotium. facit text. in l. cum te. à contrario ſenſu. C. ne ux. pro mari.* & cum eiuſmodi ſpecificatio ſit de natura iudicii intentati, præſumendum eſt eam fuiſſe factam ſecundum illius naturam, non ad effectum nouæ petitionis. Bart. *in l. cum quidam 3. not. ff. ſi cer. pet.* & declaratur voluntas diſponentis ex natura rei vt id cenſeatur voluiſſe quod eſt de natura rei. Oldr. *in conſil. 254.* Factum ita eſſe, rectorei *conſ. 186. col. 3. poſt med.* ¶ Septimo conſidero quod ſi intentio actoris fuiſſet ſubiicere illam ſpecificationem ad effectum nouæ petitionis, eius iudicium fuiſſet imperfectum, quia reſpectu generalis actionis nulla reperiretur facta proſecutio certarum quantitatum ſeu rerum, ſi illa parcella tantum pertineret ad nouam petitionem, nam ſolum cenſeretur petita reſtitutio illarum rerum, non autem redditio [illegible] rationum, quæ redditio non præſupponit reſtitutionem omnium rerum adminiſtratarum, ſed reliquorū tantum, quod in dubio præſumendum non eſt, quod voluerit recedere à iudicio intentato propter illam parcellam productam ad effectum demonſtrationis & declarationis tantū. *arg. l. nam ad ea. ff. de cond. & dem.* imò ſeruatur diſpoſitio generalis ne alias correctio inducatur voluntatis. Alex. *in conſ. 107. col. 4. verſ. non obſtat* [illegible] *arg. lib. 7.*

15 ¶ † Similiter reſtringuntur verba ſtatim generalia ne correctio indicatur [illegible]. *l. integralatum. 9.* [illegible] *ff. de muner.* [illegible] quod in dubio non præſumitur nouatio actus, ideo dicendum eſt quod per illam ſpecificationem [illegible] noluerit agens nouare iudicium, ſed potius continuare, [illegible] continuare res eſſe ſuo[illegible] quam [illegible] *quod ſi vna. ff. de verb. obl.* quem text. ad hoc propoſitum [illegible] Bald. *in conſ. 147. Dominus* [illegible] *col. 2.* [illegible] Octauò conſidero quod illæ petitiones factæ in rotulo debent iudicari & denominari ſecundum effectum, non autem ſecundum formam verborum. Bald. *in l. 2. C. commo.* [illegible] *ff. de præſtr. ver.* [illegible] *mortu.* Iaſ. *in l.* [illegible] *§ item, ſi in facto col. 3. ff. de verb. obl.* [illegible] *ex teſtam. col. 3. C. de collat.* & *latius in l. non codicillum. C. de teſt.* & [illegible] ſæpè Doct. ergo licet verba parcellæ videantur ſonare in petitionem, tamen conſiderato effectu redditionis rationū, & quia agitur contra heredes adminiſtratoris, debent intelligi quod petuntur talia bona, ſcilicet, vt pro eis ratio reddatur ad formam ſuppoſ. & poſitionum. ¶ Nonò conſidero, quod ex quo parcella ſtat [illegible] lata in poſſeſſionibus, præſumitur ſubiecta contemplatione ipſarum poſitionum, vt demonſtraretur ve-

16 ritas contentorum in ipſis poſitionibus. ¶ † Sed quando aliquid fit contemplatione alterius, inſpicitur illud cuius contemplatione fit actus. *l.* [illegible] *§ ſi teſtator.* & ibi Bart. *ff. de leg. 1. l. ſi.* [illegible] *§ interdum.* & *l. plerumq. ff. de leg. 3. l. 4. § fin. ff. de libera. leg.* &

ſemper conſiderare debemus non ipſum actū ſimpliciter ſed in qua fiat contemplatione. *l. ſi pater. § qui duos.* & ibi Bald. *ff. de adopt.* cū aliis collectis p Dec. *in conſ. 283. col. 5. verſ.* & *hoc cōfirmatur in conſ. 279. col. 1.* ¶ Decimò conſidero quod ſi in rotulo voluiſſet actor nouam petitionē proponere, debebat in expenſas condemnari ꝓpter additionē ſeu cumulationē nouæ petitionis, *iuxta not. in l. edita. C. de edē.* rurſus eiuſmodi noua petitio fuiſſet dānoſa agenti propter ineptitudinem & malam concluſionem, quia adminiſtrator cogi præciſe non poteſt vt reſtituat bona adminiſtrata, ſed tantum vt eorum nomine rationem reddat & reliqua reſtituat, vt ſuprà dictum eſt. quid enim ſi bona adminiſtrata perierint ſine facto ſeu culpa adminiſtrationis? vel quid ſi rectè ritèque fuerint alienata? ex qua ineptitudine damnum paſſurus erat, quia propter ineptitudinem actionis, abſolueretur pars ab obſeruatione iudicii cum expenſis. *l. examinata. de iud.* Bald. *in conſil. 157. quod hab.* [illegible] *col. lib. 3. quod eſt repetit.* [illegible] *conſil. 404. lib. 5.* [illegible] idem Bald. *in conſ. 338.* [illegible] *plex. in fin. lib. 1.* Sed in dubio non cenſetur quis illud voluiſſe per quod damnum pati poſſet, nam ſi in dubio non cenſetur quis tertio præiudicare. *l. 2. § ſi quis à princ. ff. ne quid in loco* [illegible] *C. de offic. deleg. cum ſimilibus.* multo minus cenſetur quis ſibi ipſi damnum velle afferre. *arg. l. præſens. C. de ſeruit.* ideò veriſimile non eſt quod voluerit recedere à petitione apta, proponendo ineptam, ſed ratione veriſimilitudinis reſtringitur diſpoſitio generalis ad id tantum quod veriſimile eſt intellectum fuiſſe. Alex. *in conſ. 76. colu. 1. lib. 4.* ¶ Vndecimò conſidero pro reſponſione quod licet vbi agitur de redditione rationum, poſſit fieri petitio certa, illud eſt neceſſe intelligere prout ſuprà declaraui, videlicet vt ſuper certis reddatur ratio, non reſpectu executionis, quod præciſe cogatur reus ad reſtitutionem talium rerum, ideò ſi ageretur via executiua tunc fieri nō poſſet petitio certarum rerum. ita declarat Alex. *in conſil. 192. lib. 7.* Illud etiam eſt de mente Ancb. *in conſ. 135. Prima ſum dubitur.* vbi etiam ſubdit, quod conuentus ad reddendum rationem, non dicitur in mora non offerendo quod debet ante factam declarationem & liquidationem quid & quantum debeat, itaque dicamus actum fuiſſe prout agi omnino oportebat. ¶ Duodecimo, vbi res eſſet dubia, pronunciandum eſſet contra petentes emolumentum ſigilli, nam in effectu dicitur † gabella, quæ eſt res odioſa, contra 17
quam in dubio fit interpretatio & iudicatur. Bart. *in l. pupillus. ff. ad l. Falcid.* Ancb. *in conſ. 164. præmittendum eſt.* Ang. *in conſ. 9.* Corn. *in conſ. 99. col. 4. lib. 1.* & *in conſ. 1, 3. lib. 3.* Iaſ. *in l. 1. ſolum 1. poſt med. ff. ſi ex nox. cau. ag.* Dec. *in conſil. 48. col. fin.* & *in conſ. 402. col. 3.* [illegible] cauſam hanc magis puto perſpicuam quam vt dubitare pluribus oporteat: quæ omnia iuris rationibus puto conuenire, in correctione tamen 7. Taurini. 6. Nouemb. MDXXXIV.

SVMMARIA.

1 *Si plures deliquerint, cauſa eorum poteſt ſeparari, & ſinguli puniuntur per diuerſos iudices.*
2 *In connexis prohibito vno prohibitum cenſetur & alterum.*
3 *Non eſt inconueniens, contrarias ferri ſententias inter diuerſas perſonas.*
4 *Quando pater in teſtamento pupillariter ſubſtituit filio,* [illegible] *cenſentur duo teſtamenta, propter pluralitatem perſonarum patris.*
5 *Perſonarum diuerſitas, diuerſam modelam deſiderat.*
6 *Vniuſquiſq; apud ſuum* [illegible] *conueniendus.*
7 *Ab eadem ſententia appellari poteſt ab vtraque parte ad diuerſos iudices, quando capita in ſententia ſunt ſeparata.*
8 *Quando quis ſit iudex in cauſa propria.*
9 *In cauſa criminali contra ſubditos agitur principaliter vt delictum puniatur.*

CONSILIVM CCXXXII.

Pro magnifico domino Bagnolii contra Fiſcum.

DIVINO ſubſidio ex corde poſtulato. Dominus Neuizanus in ſua ſylua nuptiali *char. 147.* nihil recedit ab opinione probantium toties laicum gaudere priuilegio clerici ſocii, quoties cauſa eſt indiuidua. quam opinionem etiam Socin. amplectitur *in conſ. 12. col. 6. verſ.* & *eſt adeo potens lib. 1.* & *in conſ. 82. col. pen. verſ. 9. conſ.* [illegible] *lib. 3.* Aret. *in conſ. 25. col. 2. ad fin. in 2. dubio.* Dec. *in auth. taſſa. col. 1.* [illegible] *C. de collat.* Fel. [illegible] *3. de præſcrip.* Iaſ. *in conſ. 2, 8. in fin. lib. 2.*
¶ † Sed cum dubium, quod ſi plures deliquerint poſſe ſeparari 1
eorum cauſam & ſingulos puniri per diuerſos iudices: nam iſta cauſa non poteſt dici connexa aut indiuidua, etenim connexum id dicitur, quod alteri ita connectitur & adhæret, vt neceſ-

 ſario

ſario ex eo ſequatur ſiue in antecedens ſiue in conſequens neceſſarium. Aret. *in conſil. 119. col. 12. verſ. his breuiter præmiſſis.* & vltra Aret. allego text. *in c. 1. ſi quis obiecerit. & c. 1. ſi quis præbendas 1. q. 3. gl. in c. 1.*
2 *in verſ. ſed ad fin. prob. lib. 6.* † vbi in connexis prohibitu vno, prohibitum cenſetur & alterum, nec vnum ſine altero poteſt impleri. Suadetur hoc ratione naturali, nam ſi ex vno alterum neceſſario non inferatur, quæ poteſt conſiderari connexitas. & propterea anima dicitur connexa corpori, quia ab eo diuelli non poteſt remanente eodem indiuiduo, *iuxta not. in l. executorem. ff. de verb. oblig. & eodem tit. in l. 4. § Cato.* vbi Iaſ. *in eiuſdem ſolutione.* Ang. *in conſil. 326. Ex themate. colu. 3. in quodub.* vbi quando contrauentio vnius heredis tantum facit reſcindi totum contractum, puta, ſi vnus heres dicat contractum factum vi aut dolo, illa contrauentio dicitur indiuidua, quia non poteſt eſſe in parte vis aut metus, quin ſit in toto, quando ſumus in vnico contractu. ſed in pluribus delinquentibus poteſt vnus puniri ſine altero, non alterando ſubiectum, imo quando vnum poteſt eſſe ſine altero, non datur connexitas, nec idem conſtituitur ius in vtroque. Bart. & Doctor. *in l. ſed ſi; l. re. § 1.* vbi Iaſ. *in 2. not. verſic. 3. adde ff. de vulg.* ſanè nihil prohibet plures eiuſdem delicti reos accuſari coram diuerſis iudicibus, & alios quidem condemnari vno modo, alios ad alium modum iudicari, quia diuerſa poteſt eſſe eorum cauſa, & diſpar ratio defenſionis. pro quo adduco Bald. *in conſ. 334.*
3 *Præmittendum eſt. in fin. lib.* vbi quod † non eſt inconueniens contrarias ferri ſententias inter diuerſas perſonas, per text. *in l. denunciaſſe. § quæritur. ff. de adult.* ¶ Neque refert quod caſu iſto nasci videatur ex eodem delicto quia propter hoc non dicitur indiuidua. *l. pater ff. de iniur.* vbi pro iniuria illata filio, pater poteſt agere duobus iudiciis ſeparatim, vno nomine filii, & altero nomine proprio ipſius. nam licet agatur de vna iniuria & vno delicto, tamen quia ex iniuria filii fit iniuria etiam patri, & iniuria vtriuſque poteſt eſſe diuerſa ſecundum qualitatem perſonarum, ſi pater ſit dignior vel econtra, permittitur agere duobus iudiciis ſeparatim. Ad idem videtur text. *in l. ſi quis ſeparatim ff. de appel.* vbi quando ſunt plures obligati pro eadem cauſa adminiſtrationis. ſeparatim tamen poſſunt conueniri, & ſeparatim condemnari, & ſi vnus appellet, eius appellatio aliis non prodeſt. & ſic licet factum idem videatur, plura tamen facta reputantur, propter pluralitatem perſonarum, quibus iniuria facta eſt, & propter pluralitatem perſonarum quæ adminiſtrauerunt ¶ Si-
4 militer † quando pater in teſtamento ſuo pupillariter ſubſtituit filio, inſpecta veritate cenſentur duo teſtamenta, propter pluralitatem perſonarum patris & filii. *l. Papin. § ſed nec impuberis. ff. de inoff. teſt.* licet ſecundum fictionem cenſeatur vnum teſtamentum tantum, reſpectu ſolennitatis *l. patris & filii ff. de vulgari.* & in terminis delicti, quod plura dicantur delicta ex pluralitate delinquentium, licet delinquant circa eandem rem ſunt multa iura *l. item Mela. § ſed & ſi plures. ff. ad l. Aquil. l. ita vulneratus. in ſin. eod. tit.* cum aliis adductis per Bart. *in leg. ſi non ſortem. § libertus. ff. de condict. indeb.* vbi quod ex diuerſitate perſonarum arguitur diuerſitas factorum, not. Alex. *in conſil. 58. ad fin. lib. 7.* Alibi ſcribit Specul. *in tit. de loca.*
5 *§ 3. & § ad euidentiam.* quod † perſonarum diuerſitas diuerſam medelam deſiderat: nam idem factum in perſona vnius erit grauius, in perſona alterius erit leuius, ideo pœna conſtituatur in eodem delicto ſecundum diuerſitatem perſonarum *l. Pedius. ff. de incen. ruin. naufr.* Et iſtud patet ad ſenſum naturalem, nam ſi quatuor percutiunt vnum hominem, aliud eſt vulnus vnius, aliud alterius, & ſic deinceps. facit quod ſcribit Paul. de Caſtr. *in conſ. 94. Poſito quod iſta. in prin. lib. 1.* vbi quando plures perſonæ appellant in eodem libello, dicuntur plures appellationes ob pluralitatem perſonarum allegat [illegible] *in l. libellorum. § Sed ſi aliud. ff. de accuſat. & quod habetur in l. etiam. ff. de minor. & in l. eo quod a multis. C. ſi cert. pet.* Iſta etiam diuerſitas delictorum arguitur quando contra diuerſas perſonas & res fuerint admiſſa *leg. cum. § idem reſpon.* vbi gloſ. & Bartol. *ff. de ſur. in l. 1. § ſi ad pl. reum pu. ff. de ſepul. viola.* Benè faciunt not. per Abb. de Butr. & Imol. *in c. cum inter. de re iud.* quod capitula non dicuntur connexa, ob id ſolum quod ſub vno generaliori comprehendantur, ſed quando ratio vnius ab altero diſcerni non poteſt. not. Dec. *in conſil. 117. colum. fin. & in conſ. 423. col. 2. ad fin.* Idem voluit Imol. *in conſ. 34. in prin.* vbi quod capitula connexa dicuntur quæ ab eadem cauſa aut ratione procedunt. *arg. l. cum eiuſdem. § fin. ff. de edil.* facit text. *in l. non idcirco in prin. ff. de iud.* vbi iudicium dicitur diuiſum ex diuerſitate perſonarum not. Alex. *in conſil. 44. col. penult. ad fin. lib. 7.* licet ergo videantur omnes conueniſſe in idem delictum generaliter, tamen ſingulorum ratio diſcerni poteſt, & vnuſquiſq; per ſe condemnari vel abſolui, ſi ita iuſta ſuadet ratio. Iam vbi plures [illegible] eiuſdem delicti, vix fit vt eadem pœna ſingoli [illegible]antur, ſed alii alius aut acerbius aut mitius, pro modo ex[illegible] ergo ex diuerſitate pœnæ diuerſitas arguitur delictorum Bald. *in conſ. 48. Super ueritate. col. 1. lib. 3.* Itaq; ſi ſunt plura delicta & [illegible]rata ex pluralitate perſonarum, & plures ſeu diuerſi [illegible] competentes inueniantur ipſorum delinquentium, quid [pro]hibet ipſos delinquentes puniri ſingulos per ſuos iudices. Eccleſię ordo non ſolum turbatur, ſed etiam confunditur ſua vnicuiq; iuriſdictio non ſeruatur *c. pervenit. 11. q. 2.* Rom. *in conſil. 480. Quæſtio eſt.* Amplius probandum eſt etiam ſi eadem eſſet cauſa defenſionis omnium, adhuc ſpectandum non eſſe fieri poſſe, vt pro eodem facto contrariæ dicantur ſententiæ, quando ſunt plures ordinarii plurium, circa eandem rem delinquentium, nec ſententia tunc vnius abſolutoria derogaret ſ[ententiæ] alterius condemnatoriæ & econtra, neq; tunc obtinet regula quod
6 continentia cauſæ diuidi nõ debet, quia † vnuſquiſq; ap[ud] ſuum ordinarium eſt conueniendus *c. fin. de ordin.* Iaſ. *in l. nulli. col. 2. ad fin. in ſecunda limitatione. C. de iud.* neq; mirum hoc videri debeat, nam ſi ge plures creari in eadem ciuitate magiſtratus, ſeparatam [habe]ntes iuriſdictionem, plures etiam delictum idem admiſiſſe, & aliquos ex delinquentibus ſubditos eſſe vni magiſtratui, alios autẽ alii, nonne quilibet magiſtratus cõtra ipſos delin[quen]tes ſeparatim procedet? ponatur ſunt plures domini vni[us ca]ſtri, habent ſubditos diuiſos, quo caſu quilibet poteſt dep[utare] vnum officialem pro parte ſua. Brun. Aſten *in conſ. 93. col.* Fel. *in c. prudentiam. colu. 1. de off. deleg.* Vel finge ſubditum delinquere extra territorium ſimul cum aliis non ſubditis, nonne poterit Iudex originis in ſubditum animaduertere, licet iudex territorii poſſet in alios vindicare ad modum diuerſum? *iuxta not. in l. 1. C. de ſum. Trin. & Fide Cathol.* Soc. *in conſ. 35. co. penult. circa med. lib. 1.* late Alex. *in conſ. 3. lib. 1. & in conſ. 116. col. fin. lib. 6.* & alibi ſæpè Docto. ¶ Neque iſto caſu procedit illa conſideratio quod poſſint ferri contrariæ ſententiæ. *arg. not. in cap. tuam de ord. cognit. & in l. a ter. pu. ſol. ſim legit.* facit text. *in l. vbi repugnantia ff. de reg. iur.* nam illud procedit quando eſſet contrarietas circa idem ſubiectum: quia duo contraria eodem in ſubiecto, eodem tempore, ſimul ſtare non poſſunt, ſed hic eſſet contrarietas circa diuerſa, quia in diuerſis perſonis, ideo nihil repugnat, neq; eſſet inconueniens quod ex diuerſitate perſonarum diuerſæ eſſent ſententiæ, quia potuerunt aliqui grauius aliis delinquere. ¶ Rurſus, illa ratio quod dici poſſent contrariæ ſententiæ, non videtur conſideranda, quia præſumendum eſt iudicem ſecutum eſſe ex iuris rationibus pro ſingulorum votis. *l. 1. C. de offic. ciuil. iudic. l. merito. ff. pro ſocio.* neque conſiderandus eſt iniquus euentus in odium dom. Bagnolii, vt eo modo ius ſuum amittat. *l. meter ſtipulantem. § ſacram. ff. de verb. obligat.* Et ſatis eſt dediſſe inſtantiam in qua iſta ratio non conſideratur ſcilicet in pluribus ordinariis, item in iudice loci, originis & commiſſi delicti. *gloſ. in l. creditori. ff. de oper. no. nun. in § Pamnum. Inſtit. de rer. diuiſ. ibi, nam & apes idem pa. iunt.* ¶ Non omitto quod Bald. pulchrè ſcribit *in conſil. 154. proponitur quod quidam ſocij.* *lib. 1.* vbi ſi tractatus delicti eſt factus in vno territorio, & conſummatum delictum in alio territorio, vterque Iudex poteſt punire delinquentem, videlicet vnus pro tractatu, & alter pro conſummatione delicti, ecce quomodo loquitur Bald. in caſu magis dubitabili, nam in caſu Bal. agebatur de puniendo eandem perſonam, & tamen quia delictum poterat ſeparari, videlicet tractatus à conſummatione, vult Bal. quod iudices plures poſſint cogniſcere, quanto magis idem dicendum ſit in caſu no[ſtro] vbi agitur de puniendo plures perſonas. Secundò principaliter in fauorem dominorum Bagnolii adduco text. vbi Canon. *in cap. ſi duob. de appel.*
7 † vbi ab eadem ſententia appellari poteſt ab vtraq; parte ad diuerſos Iudices, quando capitula ſententiæ ſunt ſeparata: in caſu noſtro cauſa videtur ſeparationem accipere, vt præmiſſis apparet, ergo poterit quilibet delinquentium coram ſuo iudice accuſari. ¶ Non obſtat quod dom. Aymarus offenſam acceperit a ſubditis aut aliis delinquentibus iniuriose, & propterea iniquum videri, cum in cauſa propria ius ſibi dicere, quia [illegible] ad nihil abhorret à iure, quando habet merum & mixtum imperium, potiſſimum quia factum notorium eſt. Alex. *in conſil. 13. colum. 5. lib.* ¶ Secundo reſpondeo quod ſententiæ condomini ipſius loci quorum iuriſdictioni derogari non debet ob ſuſpicionem vnius Duct. *in c. 1. ſuper gloſ. 1. de iud.* [illegible] *in conſil. 40. colum. 1. lib. 2.* ¶ Tertiò reſpondeo quod hodie [illegible]

tior

rius recuſari non poteſt, ſed datur adiunctus *auth. a ſ hac. C. de iud.* *conſimil.* nec omnino repellitur iudex [illegible] cauſ [illegible], nam [illegible] gnoſcit iudex de iniuria [illegible] illata [illegible] officio ſuo [illegible] *quæ forte. [illegible] ſi quis.* vbi Bart. *ff. [illegible] penul. l. 2. C. de ſportul.* Oldr. *in conſil. 7 quædam maledicta mulier.* Alex. [illegible] *in conſil. 5. colum. pen. lib. 1.* Sunt [illegible] videmus quod prælatus poteſt punire monachum pro delicto commiſſo contra eum, quando [illegible] procedit p[illegible] intereſſe ſuo p[illegible] mato ſed publico ve delict[illegible] impuniatur. Cald. *in conſil. 20. in tit. de reg. [illegible]*

8 [illegible] etiam valere conſuetudinem † quod quis ſit iu[illegible] in cauſa propria Roman. *in conſil. 334. in pri.* optime facit quod [illegible] bie [illegible] *in conſ.* [illegible] 91. *[illegible] proponitur quod in quadam ciuitate colum. 2 libr. 1.* vbi [illegible] in cauſa principali efficiat [illegible] poſtea iudex appellationis, pro[illegible] debet cau[illegible] remouere, [illegible] ipſe iudex ob ſuſpicionem debet cauſam [illegible] delegare. Idem dicamus in caſu [illegible], quod ob iſtam ſuſpicionem non debeat cauſa tol[illegible] dominorum, [illegible] qui ſuſpect[illegible] alle gatur, partes [illegible] committat. § [illegible] reſpondeo, quod cauſa [illegible] agitur coram ip[illegible] A[illegible], [illegible] coram caſtel[illegible] dominorum omnium Bag[illegible], qui [illegible] nus non videtur [illegible] qui depu[illegible] a pluribus dominis, quia videmus quo [illegible] caſtellanu[illegible] a pluribus dominis con[illegible] procedit contra [illegible] in cauſa criminali. Bruin. Aſten. *in conſil. 3 [illegible] in conſil. 31.* & tamen [illegible] modum talis cauſæ pertinet ad ipſos dominos, quibus debentur mulctæ pecuniariæ, ſed ſuſpicio ceſſat propter pluralitatem ipſorum dominorum, pro hoc quod dicimus ſuſpic[illegible] purgari propter numerum, ſeu teſtium defectu[illegible] numerum ſuppleri. quia non ſit veriſimile tot teſtes [illegible] falſum depouere. *l. 2. §. euſdem. in verbo, numerus. vbi glo. & [illegible] ff. de teſt. [illegible] tal in l. prætor. §. [illegible] in 2. not. [illegible] de dendo cum [illegible]* § [illegible] reſpondeo, quod

9 in cauſa criminali contra ſubditos dominorum, non [illegible] principaliter de commodo ipſorum dominorum, quia principaliter agitur [illegible] delictum puniatur, & [illegible] principaliter agitur de eo commod[illegible] & fauore Reipubl. ne delicta ſiant impunita. *[illegible] in fin. ff. ad l. Aquil.* commodum autem quod applicatur dominis, venit in conſequentiam, ſed tali commodo quod in conſequentia venit, curandum non eſt, ideo tutor authoritatis pupillo in adeunda hereditate, licet ex ea legitimū conſequatur *[illegible] C. de adm. tut. facit tex. in l. 1. ff. de [illegible]* ſimiliter valet [illegible] præpoſituræ facta cum conſenſu capituli, licet ex ea capitulum commodum ſentiat in conſequentiam. Rota *de ci. 853. præpoſitura in antiq.* & quod dicunt Doctor. *in l. [illegible] de teſtam. Coron. in cap. [illegible] de teſtib. de legatar. o teſtam* licet ex eius depoſitione commodum ſentiat, quod qualiter procedat in d. [illegible] locis [illegible]. Et magis in terminis adduco quod ſcribit Hoſtien. *in [illegible] ex parte 1. de verb. ſignif. & in cap. præſentium. de teſtibus. lib. 6.* vbi qu[illegible] epiſ[illegible] poteſt eſſe iudex in cauſa Ec[illegible] ſuæ, licet in ea [illegible] commodum, quia habet victum & veſtitum in bonis eccl[illegible], ſe[illegible] Gemin. *in conſil. 24. colu. 2. poſt med.* quod ſaltem procedit quando agitur de bonis [illegible] ſuæ. Ioan. Aud. *in [illegible] ſuper. de teſtib.* Gemin. *in d. conſil. 114. col. 1.* Dec. *in [illegible] ff. [illegible] col. fin. de iud.* Sed quod prælatus indiſtincte poſſit eſſe iudex in cauſa [illegible] Ant. de Butr. Abb. & Doct. *in c. cum venſſent. [illegible] iud.* eſt verum ſecundum Doctor. ibi quod recuſari poteſt tanquam ſuſpectus, [illegible] tunc propter ſuſpicionem dandus videtur adiunctus, [illegible] propter ſuſpicionem cauſam alteri delegare poterit, *ſecundum ſing. glo. in d. c. cum veniſſent.* quam ſequitur Corn. *in [illegible] 262 col. [illegible] poſt med. lib. 3.* addo Oldr. *in conſil. 283. Circa præſens thema col. [illegible] lib.* [illegible] ratione ſuſpicionis non videtur abdicanda iuriſdictio [illegible] dom. Bagnoli immò nec ab ipſo domino Aymaro, ſed tantum [illegible] poſſet ipſe dominus Aymarus ad delegan[illegible] alt[illegible]: ſed licet in domino Aymaro videatur ſuſpicio, [illegible] non æque militat in alijs conſortibus. Ad ſummum [illegible] videtur priuari dom. Bagnoli iuriſdictione ipſorum [illegible] eorum culpa *[illegible] quærente. de reſtit. ſpol. ſatiſp. [illegible] 56 d. c. [illegible] 16. quæſt. vlt.* & ſupra di[illegible] eſt in ſecunda reſponſione. Inferiùs ex præmiſſis quod [illegible] domin. Bagnoli in tuto videtur [illegible] arg[illegible] a ſufficienti partium enumeratione, nam aut [illegible] perſona, in quæ homicidio aut vulneribus interfuerint, dicuntur [illegible] & ſeparabi[illegible], & res videtur clara, quod dom. Bagnoli aut officiales eorum poſſunt cognoſcere, & animaduertere in eos, in quos poteſtat[illegible] & iuriſdictionem habent. aut ſunt connexa, & aliqui ex delinquentibus dicuntur clerici, & tunc ſiecus ſecularis nihil habet quærere. Aut dicuntur laici, & tunc fruſtra tractatur quod magis dignum tra-
hat ad ſe [illegible] dignum. § Porrò in re dubia pronunciandum videtur in [illegible] in domino [illegible] contra fiſcum *[illegible] de iure fiſc.* maxime quia tractatur [illegible] teneantur eorum [illegible] *arg. l. per retentionem. C. de vſu.* d[illegible] pu[illegible] autem eſſe [illegible] attendam ad correctionem tam [illegible] cautum, ſi efficacioribus [illegible] [illegible] conſequatur. [illegible]. Decembris [illegible] 4 [illegible] E[illegible] [illegible] iatum in fauorem dominorum Bagnol[illegible] Aymo[illegible] Sanliano. I. V. D.

SVMMARIA.

1 *Arrha quando non perdantur.*
2 *Factum per [illegible] in fortuitum.*
3 *Qui non obedit principi delictum [illegible].*
4 *Cauſa [illegible].*
5 *Obligatio ad factum, non tenet [illegible] finito tempore.*

CONSILIVM CCXXXIII.

DIVINO [illegible] ſulto. In propoſito caſu [illegible] ſſimorum patrum, quorum [illegible] videatur ita adintegrum [illegible] ut [illegible] de [illegible] ea videat[illegible] & no[illegible] us. [illegible] quomodo [illegible] explicari per te[illegible] *in l. 2. C. de ſponſal.* & ibi [illegible] vbi ſi [illegible] † at hæc [illegible] 1
duntur niſi [illegible] præcedat ca[illegible]um, ſed hic impeditur emp[illegible] contractus [illegible] ob caſum [illegible] ſecutum, id eſt, inhibitionem ſuperioris, [illegible] alpatptius emptoris, quæ qui[illegible] inhibitio videtur [illegible] uitus, cui per dominis con[illegible] non putet [illegible] *[illegible] ſi eo tempore ff. de admin. re. ad ciuit. pert. & l. [illegible] fortuitis C. [illegible]* § Quod autem prouideri non poſſet eiuſmodi [illegible] inhibitioni, oſtendi[illegible] quia ea quæ pendent a poteſtate Principum cenſentur apud nos impoſſibilia. *l. a. ad Iulian. §. conſtat ff. de le[illegible] 1.* nec poteſt ſubditus loqui ad Principem, Domine cur ita facis? Oldr. *in conſ. 330. col. 2. in fin.* Bald. *in prælud. feu. col. 3. ver. [illegible] deprim. [illegible] Iaſ. in l. [illegible] col. [illegible] ff. de conſtit. prin. in l. rem. [illegible] col. 2. C. de precib. Imper. offer. & in l. [illegible] teſtam. col. [illegible] C. de teſtam.* Dec. *in conſ. 91. col. 3 & [illegible]* [illegible] interim [illegible] de facto Principis quod dicatur caſus fortuitus, not. Paul. de Caſt. *in conſ. 210. Proponitur [illegible] quod quidam col. 2 lib. [illegible] per text. in l. Lucius. ff. [illegible]* Alexan. *in conſ. 220 lib. 2.* decis. Neap. *deciſ. 5[illegible].* ſed latius ac pulchrius cæteris tradit Bald. *in conſ. 395. Pro domino [illegible] libr.* [illegible] vbi fortius vult, non poſſe quem ſe obligare ad talem caſum ex facto Principis prouenientem, quia talis obligatio [illegible] continet peccatum, & daret materiā delinquendi quod quis ſe obliget contra factum Principis, adeo quod talis obligatio [illegible] non ſit [illegible] iuramento ecundum eum. & [illegible] quod factum Principis dicatur caſus fortuitus, 2
tradit Iaſ. *in conſ. 26. col. penult. in fin. lib. [illegible] in l. [illegible] allegatus in 3. not. ff. de r. [illegible] dubius* quinimò etiam factum Iudicis dicitur caſus fortuitus. gloſſ. & Bart. *in l. ſi per imprudentiam ff. [illegible] cautio.* § Secundo principaliter arguitur, nam de iure obligantur ſubditi obedire præceptis Regis, etiam ſi grauia aut intollerabilia videantur. *c. in memoriam [illegible] contra morem. 1[illegible] diſt.* Bellamer. *in conſil. 16 col. 1.* Gemin. *in conſ. [illegible] col. [illegible].* L. qui Principi non obediens, morte moriatur [illegible] *obed.* Reg. c. 3. & qui non obedierit decreto Iudicis morte moriatur. Deut. c. 17. & Paul. ad Rom. c. 12. Omnis anima [illegible] ſublimioribus poteſtatibus ſubdita ſit. *c. [illegible] extra. de conſtitu.* [illegible] peccatum dicitur ſuperiori non obedire. *[illegible] ſecundum 8. queſt. [illegible]* & quando ſubditus non eſt de con[illegible] Principis, non habet inquirere de præcepto an ſit iuſtum vel iniuſtum. Bartol. *in tract. de repreſſa. in 1. quæſt. 6. quæſtionis principalis.* † & Principi non obediens dicitur violator 3
legis, & capitaliter puniri debet, ac reus etiam ſacrilegij dicitur. Bald. *in conſil. 171. Quæritur vtrum [illegible] lib. 2.* ſed in pœna rectius videtur locutus idem Bald. *in conſil. 367. [illegible] lib. 3.* vbi quod pœna eſt arbitraria, quando certa in præcepto conſtituta non eſt. tradit idem Bald. *in conſil. 376 column. 2. poſt med. libr. 3.* multo magis tenebatur libertus [illegible] Maſſa obedire præcepto quod iuſtum apparet, ob expreſſionem cauſæ, quia Genuenſes erant eorum [illegible] hoſtes acerrimi. talis enim aſſertio Principis probat in qua ipſius principis fundatur intentio, etiam quod aſſerat de facto alieno, quia [illegible] transfert onus probandi contrarium in aduerſarium *[illegible] ff. penult. in c. nonnulli. de reſcript. gloſ. in cle. litteris. de probat. in verſu. ſi eſſe [illegible]* Roman. *in conſil. 369 col. 4. in 9. dubio.* Corn. *in conſil. 31. col. [illegible] verſu. & maxime cum pontifex. libr. 4.* not. Moder. *in c. quam Eccleſiarum de conſt.* & dicitur funda[illegible] intentio Principis ex verbis narratiuis, quādo aliquid aſſerit ſeu nar-

[illegible]

[illegible] , quam [illegible] culpa [illegible] re non [illegible] eſt. ¶ Vnde [illegible] Regiæ maieſtati [illegible] contractus [illegible] [illegible] 34. [illegible] Clauerta ex [illegible] I. V. D.

SVMMARIA.

1 [illegible]
2 [illegible] ſimpliciter
3 [illegible]
4 In ca[illegible] [illegible] edem[illegible].

CONSILIVM CCXXXIV.

An apotheca ſit domus, aut domus coniuncta.

D[illegible] ex [illegible] propoſito. Ex datione in ſolutum [illegible], qui [illegible] apothecam [illegible] 1 [illegible] fundamenta. ¶ Et [illegible] quando [illegible] apothecam con[illegible] [illegible] intero [illegible] tione [illegible] tatibus, [illegible] torum, in qua non debet compre[illegible] pro quo ſit [illegible] apotheca, [illegible] ſolutum [illegible] non contr[illegible] [illegible] Decl. *colum.* 20 [illegible] tacit [illegible] Corne. *in conſ.* 8[illegible] *colum.* 5. *verſ.* [illegible] *lib.* 3. vbi [illegible] quis donauit aliqua bona particulariter [illegible], ſi poſtea facit [illegible] generalem donationem, in generali donatione non veniunt bona particulariter [illegible] donata, quia non eſt veriſimile quod voluerit donator fidem ſuam [illegible] erga primum donatarium. A[illegible] Corne. *in conſ.* [illegible] 6 *col.* 4. *verſ. ex quib. omnibus. lib.* 3. quod ſi quis in vltimis codicillis reuocet legata antea facta, non cenſetur reuocare ea quæ donauerat in primis codicillis cum [illegible] mento, quia non eſt veriſimile, quod quis deteraret. F[illegible] tibi Alex. *in conſ.* 7 *col.* [illegible] *in* 4 *dub.* Corn. *in conſ.* 165 *col.* 3. [illegible] *lib.* 2. quod generalis inſtitutio heredis, non trahitur ad bona quæ non erant duratura in hereditate teſtatoris, [illegible] ponere potuiſſet, puta donata cauſa mortis, quia [illegible] non eſt veriſimile quod teſtator voluerit reuo[illegible], [illegible] licet reuocare potuiſſet. Furtius [illegible] mulier quæ [illegible] fundum [illegible], det bona ſua generaliter in dotem, [illegible] per talem dotis conſtitutionem reuocare legatū, [illegible] facile poſſet reuocari: ita Alexand. *in conſ.* 31. *colum. fin. lib.* 1. [illegible] dictum [illegible], & ſequitur Iaſ. *in l. quis poſt. col.* 3. *verſ.* [illegible] Paul. de Caſtr. *in conſ.* 347. [illegible] *colum.* 2. *poſt*
2 *med. lib.* 1. vbi quod in generali donatione ſolum veniunt bona

quæ donantis ſimpliciter erant, [illegible] in iſta datione in ſolutum generali, non cenſetur [illegible] [illegible] *in l.* [illegible] de conſuetudine quod probari debeat, [illegible] [illegible] 169. [illegible] apotheca [illegible] [illegible] Alexand. *in conſ.* 112 *col.* 2. *verſ.* [illegible] argumentum quod æque principaliter & ſeparatim [illegible] tebatur. Rurſus quod illa non erat ad [illegible] ad diuerſum & ſeparatum. Rurſus appellatione [illegible] non veniunt ea quæ ſunt diuerſæ qualitatis [illegible] conce[illegible] caſtrum cum pertinentiis, [illegible] in territorio caſtri permanente [illegible] dicto tantum coh[illegible] territorio, [illegible] *prin.* ¶. *de acq. poſſ.* quod dictum [illegible] *conſ.* 14. *colu. fin. lib.* 7. ſed iſta apotheca eſt [illegible] mo, quia domus facta ad habitandum, ap[illegible] gociationem, nec habet neceſſitatem ad vſum habitationis. ¶ Tertio † valet argumentum a communiter accidentibus, [illegible] 3 *quæ natales. C. de prob. not. in l. nouimus. C.* [illegible] *de prob.* vbi Dec. *colum.* 11. ſed a co[illegible] do quis vendit domum cui coniuncta eſt apotheca, con[illegible] eſt non [illegible] ad inſtrumentum [illegible] apotheca [illegible] argu[illegible] in propoſito noſtro [illegible] *poſt med. verſ.* 6. [illegible] ¶ R[illegible] apotheca dicitur [illegible] ſi intentio partium fuit, quod compr[illegible] in ſolutum, [illegible] ſpecie, [illegible] *l. prætor ait.* §. *quod autem ff. de* [illegible] Alexand. *in conſ.* 185. [illegible] ¶ Quando aliquid dicitur eſſe de pertinentiis alicuius rei, maxime conſideratur quantitas precii & rei valor. Alexand. *in conſ.* [illegible] 6. *& in d. conſ.* 14. *ad fin. lib.* 7. ſed hic fuit deductum domum [illegible] apothecam multo ampliſſime valere atq; ſit q[illegible] rorum, pro qua datio in ſolutum habita eſt, ergo non [illegible] mile, cum qui in ſolutum dationem egit, [illegible] tum, voluiſſe in ſolutum dare rem valoris [illegible] *gum. l. cum de indebito. in* [illegible] *de prob.* [illegible] quam valoris amplitudinem cenſetur pa[illegible] [illegible] vnum allegando Bart. *in l. vn. C. de rel.* [illegible] quantitate pre[illegible] clutio. Bart. *in l. ſemper in ſtipulationib. ff. de reg. iur.* [illegible]

quid includatur in parte diuiſa, vel non, hoc cognoſcitur & iudicatur ex quantitate pretij. Soc. in l. 1. in 4. not. ff. de reb. dub. Curt. iunior in conſ. 80. colum. 1. ¶ Quinto, ſi verba inſtrumenti accuratius animaduertamus, eſſe videtur res extra omnem difficultatem, nam fuit data in ſolutum domus in qua ipſe debitor morabatur, & ſic reſtrictio ob illud relatiuum ſine copula. Lex tamen adiectio. ff. de leg. 3. & illa adiectio in qua morabatur reſtringit ipſum actum, quia appoſitio loci in principali diſpoſitione reſtringit ipſum actum. Bart. in l. inter ſtipulantem. §. ſacram. colum. 4. ff. de verb. oblig. Dec. in conſ. 124. & in conſ. 327. colum. 3. & ſequ. reſtringenda eſt igitur datio in ſolutum ad domum in qua cedens in ſolutum morabatur, non ad apothecam quam habitare non conſueuerat, & ſi velis dicere quod relatiuum ſine copula quandoque ſtat demonſtratiue, vt not. Bart. in d. l. cætenen adiectio. Soc. in conſ. 111. colu. 5. lib. 3. adhuc idem dico, quia dans in ſolutum, demõſtrauit rem quam includi volebat ſub ipſa datione, ergo res in ſolutum data non debet egredi terminum demonſtrationis. & in ſimili dationem in ſolutum reſtringit Anch. in conſ. 436. in his dubijs colum. pen. ad fin. in 4. dub. ¶ Sexto ipſa Franceſchina habet verba inſtrumenti clara in eius fauorem, quia loquitur inſtrumentum de apotheca, at aduerſaria vtitur ex verbis generalibus obſcuris, quia non eſt expeditum nec generaliter verum domus appellationem ad apothecam pertinere, ideo habenda eſt interpretatio contra aduerſariam, quæ in verbis deſiderium fundat, & eidem imputandum cur legem apertius non dixerit. l. veteribus. ff. de pact. vbi Bart. cap. in potentia. de prob. Alexand. in conſil. 128. colum. fin. lib. 5. & verba pacti aut contractus interpretantur contra eum, qui ex ipſo pacto aut contractu vtilitatem percipit, ſeu ad cuius vtilitatem pactum factum eſt. l. ſi in emption. in prin. ff. de contrahen. empt. Alber. de Roſ. in d. l. veterib. Imol. in conſ. 21. colum. 1. Iaſ. in conſil. 59. colum. 1. lib. 1. ¶ Septimo, cum prima cauſa pertineat ad donationem, licet limitatam ad centum ſcutos, deinde data fuerit in ſolutum ipſa domus, & dubitetur an appellatione domus, veniat apotheca, admittenda eſt declaratio
4 ipſius donatoris, quia † in caſu dubio ſtandum eſt declarationi concedentis. Paul. de Caſtr. in l. heredes palam §. ſi quid poſt. ff. de teſtam. cum ſimil. quæ Dec. congregat in conſ. 514. colum. fin. & in conſ. 162. colum. 2. declaratio autem concedentis ſumitur ex diſpoſitione poſtea ſecuta de ipſa apotheca, in fauorem Fráceſchinæ, ex quo facto voluntas declaratur quod voluerit eam comprehendi ſub datione in ſolutum. leg. Paulus reſpondet non tantum verbis. ff. rem ratam habe. facit Alexand. in conſ. 146. col. 6. lib. 5. vbi quod mandatum dubium declaratur per alias ſcripturas mandantis etiam ex interuallo ſcriptas, facit tex. in l. ſi quis ex argentariis. §. ſi initium. vbi Bald. & alij. l. ſed et ſi. potiſſimum admittenda eſt interpretatio ipſius concedentis, quia in manu & poteſtate eius erat ſi vellet aliquid donare vltra quantitatem centum ſcutorum, & ſic in datione in ſolutum pertineret ad apothecam. facit quod ſcribit Bald. in conſ. 406. lib. 5. quod in dubio actus debet intelligi eo modo quo declaratur per proteſtationem, eadem ratione dicemus declarari ex diſpoſitione dom. Franciſci Cruelli poſtea facta, eum non intellexiſſe quod apotheca comprehenderetur ſub datione in ſolutum facta de domo maxime, quia ita diſpoſuit in vltima voluntate, quo tempore ſalutis ſuæ verifimiliter rationem habebat, iuxta not. in l. ſi quis moriens. ff. ad Syllania. & ſi donataria vult dicere domum donatam ſine apotheca non valere ſcutos centum, id ipſum probare opus habet, quia eſt fundamentum ſuæ intentionis. l. actor. C. de proba. l. ei qui dicit. ff. eodem tit. cum ſibi non competat rei vendicatio ad apothecam, & actio perſonalis non competit contra ſingularem ſucceſſorem. l. ſin. § fin. ff. de contrahen. empt. imo etiam ſi prohiberet, adhuc non videretur audienda in apotheca, ſed agi oportet contra heredes donatoris actione perſonali, & in ſubſidium hypothecaria contra tertios poſſeſſores. ¶ Amplius eidem poſſet imputari cur in ſolutum accepit rem breuioris valoris: nam per dationem in ſolutum omnis tollitur obligatio. Inſtit. quib. mod. toll. obl. in prin. igitur facta datione in ſolutum, non poteſt agere pro debito principali, etiam non alleget. quam iuſta occulam, puta dolum aut læſionem enormem, & actionem in ſolutum acceptatam, & rem traditam non videtur dubitandum quod aliud petī non poſſit, ex his quæ Dec. ſcribit in conſ. 12. facit quod ſcribũt Bart. & Ang. in l. qui ſibi. § qui Stichum. ff. de ſolu. de locato equi qui recipit eum deterioratum ſ. n. t. faciunt quæ ſcribunt Moder. in l. centum Capuæ. & in l. fin. de eo, quod cer. lo. de recipiente ſortem ſimpliciter, quod ſibi præiudicat in acceſſoriis. not. Soci. in conſ. 18. col. 2. lib. 1. ¶ Et ſi dicas, non nocere acceptationem d[illegible] quia putaret ſe apothecam comprehendi, reſpondeo q[illegible] gumentum procederet ſi apothecam et [illegible] habuiſ[illegible] acceptatione domus declaraſſet, quod intellexerit & [illegible] iam apothecam obtinere plane acceptatio domus ampli[illegible] facta, & ipſa poſſeſſio totius domus ſine apotheca om[illegible] detur præiudicare. ¶ Octauo verba dationis in ſolutum d[illegible] intelligi vt minus obligetur ipſe dom. Franciſcus quam ſit [illegible] ſibile. l. ſi quid venditor. in fin. ff. de ædil. edict. Angel. in conſ. 67. themate præd. in ver. circa fin. ſed excludendo apothecam, minus [illegible] tur debitor. ¶ Nono iſta dubitatio videtur ex his quæ Co[illegible] ga optiſſime docet in conſ. 203. Quamuis in præſenti conſultatione [illegible] bi conſuluit, in legato domus non venire apothecam q[illegible] mus regulariter intelligitur de domo habitationis, ſed a[illegible] ca non ædificatur ad habitationem, multo fortiſſime tan[illegible] dem probandum eſt in caſu noſtro, vbi non tractatur de [illegible] tra tam fauorabili qualis eſt vltima voluntas. Secundo [illegible] in caſu Cornel. legatum non erat limitatum ad certam [illegible] tem, ſed ſimpliciter legata domus, at hic limitata eſt d[illegible] lutum ad quantitatem centum ſcutorum, ideo præſum[illegible] non eſt, dicere voluiſſe debitorem amplius in ſolutum dare atque eſſet quantitas debita. Tertio, quia hic debitor expreſſe declarauit ſe intellexiſſe de domo habitationis, dum di[illegible] o [illegible] moratur. fortius ſcribit idem Corn. in conſ. 206. col. 5. verſ. [illegible] do. lib. 5. quod licet apotheca habeat ſuos parietes & tec[illegible] adeo quod ſit apta ad habitandum, non tamen venit appellatione domus ſi illa non habitatur, ſed ars tantum in ea [illegible], à fortiori idem dicendum eſt in caſu noſtro, quia iſta apotheca nullo modo apta eſt ad vſum habitationis ſed me[illegible] tum: & quo magis contemplor, eo grauius accedit iſta [illegible] iuris rationibus vndique inſtructa, nec minus [illegible] firmata. ¶ Poſtremo, item clare conſtat quando dominus Franciſcus non habuit animum dandi in ſolutum etiam apoth[illegible] de qua ſpecialiter diſpoſuit, conſequenter conſtitutum a[illegible] tum in datione in ſolutum nihil agit quo ad apothecam q[illegible] non poſſidebat etiam ab initio nomine aduerſariæ, nec videtur extendendum conſtitutum vltra voluntatem conſtituent[illegible] leg. non omnis. ff. ſi cert. pet. ſaltem cum ſit dubium an apoth[illegible] niat appellatione domus, ratione dubietatis conſtitutum non videtur operari. argu. l. 3. § incertum ff. de acquir. poſſ. nam quo [illegible] o poteſt dici poſſeſſam apothecam nomine aduerſariæ, de qua quæſtion. tractatur, an veniat appellatione domus. ¶ Nec [illegible] miſſis obſtare videtur authoritas Alex. in con. 204. lib. 6. vbi [illegible] te conſuluit, appellationem domus ad ipſam etiam apothe[illegible] m pertinere, quia in caſu Alex. plurima concurrebant quæ [illegible] a nimum inducerent: quæ ipſa in caſu, de quo agitur, non modo non procedunt, verum etiam alia non parum vigentia con[illegible] e ad contrarium iudicium animos conſulentium & iudicantium adducentia. & ita reſcribendum puto, ad correctionem [illegible] ſanius conſulentium. Thaurini, 6. Decembris. 1534. Aymo Crauetta ex Sauiliano. I. V. D.

Svmmaria.

1 Quando perdatur ciuilis poſſeſſio.
2 Iudex quando non poſſit priuare poſſeſſorem abſentem.

CONSILIVM CCXXXV.

In cauſa poſſeſſ. D. Antonij de Auenturina.

Divino ſubſidio ex corde poſtulato. Ad explicationem vniuerſæ dubitationis præſupponendum eſt, quod vbi poſſidens nomine alterius in alium transfert poſſeſſionem, is cuius nomine poſſidebatur, perdit omnem poſſeſſionem etiam ciuilem. l. fin. C. de acquir. poſſeſſ. vbi Bart. æquiparat illa du[illegible] quando colonus expellitur, vel quando poſſeſſionem [illegible] dit, ſed quando expellitur, † dominus perdit etiam ciuile. l. per 1
egre. §. quibus explicitu. ff. de acquir. poſſ. ff. l. [illegible] § non a[illegible] vbi Bart. ff. [illegible] vi & vi arm. cap. ex part. de reſcript. gloſſ. & Doct. in cap. olim. [illegible] de reſtit. ſpol. Abb. in conſ. 100. in 1. dub. lib. 1. Socin. in conſ. 18. colum. 9. verſ. [illegible] ſi diceretur. lib. 1. Iaſ. in l. naturaliter. in prin. colum. 1. ad fin. ff. eod. tit. facit, nam vbi poſſidens ciuiliter negligit recuperare poſſeſſionem naturalem, quam intelligit ab alio occupatam, perdit ciuilem etiam per modicum tempus, eo quia ſuſpicatur ſe poſſe repelli. l. quamuis. & l. quod vero. § fin. ff. de acquir. poſſ. Bart. & Doct. in l. ſi domo. § ſi forte. eod. tit. Alexand. in conſ. 94. colum. 3. verſic.

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nec etiam obſtat ſi dicatur lib. 5. in repet. l. ſæpe. col. 45. verſ. quod tamen fallit. ff. de re iud. Soci. *in d. conſ. 18. colum. 9. verſ. nec obſt. ſi diceretur lib. 1.* Deci. *in conſ. 400. col. 5. circa med.* & dicitur negligere recuperationem, ſi differt per triduum. *gloſſ. in l. 3. §. cum igitur. ff. de vi & vi arm.* Alexan. *in conſ. 201. col. 4. in prin. lib. 7.* ſecus ſi poſſeſſio ab alio occupata nõ ſit, vel occupatio ignoretur, quia tunc ex negligentia recuperandi non perditur in modico tempore, ſed requiritur longum tempus decem annorum. glo. Bart. & Doct. *in l. 1. C. de ſeruis fugit.* ergo poſito quod Anton. de Auenturina eſſet Antiquior poſſeſſor prædii, cuius nomine agitur, non propterea circa executionem iudicati ſuper actione perſonali prolata tentanda erat executio in dicto prædio, cuius poſſeſſionem perdiderat, & quæ tranſlata erat in ipſum Stephanum de Perolis, quam tranſlationem ſciebat ipſe Anton. de Auenturina, vt acta probant, ſciebat enim poſſideri & teneri illud prædium per ipſum Ste-
2 phanum. nam Iudex pro executione † ſententiæ non poteſt priuare tertium poſſeſſorem abſentem neq; citatum, & ſi de facto inducit victorem in poſſeſſionem, tertius non priuatur ciuili poſſeſſione. Bald. *in conſ. 149. proponitur quod quadam tutel. in fin. lib. 3. per not. in l. ſi fundum. §. fundum. ff. qui ſat. cog.* pulchre Anchar. *in conſil. 291. Videretur prima facie dicendum.* Alex. *in l. à diuo Pio. §. ſi poſt addictum. col. fin. ff. de re iudic.* Soci. *in conſ. 158. col. 4. verſ. videamus ergo. & colu. 6. verſ. & ratio prædictorum eſt. ls. 1.* Iaſ. *in l. iuſte. col. 3. ante med. ff. de acquir. poſſeſſ.* ¶ Et hoc procedit etiam ſi res fuiſſet alienata pendente iudicio per debitorem in fraudem creditoris, nam ſi poſtea feratur ſententia in fauorem creditoris ſuper actione perſonali, 1.6 tamen mitteretur executioni contra tertium in quem res tráſlata eſt lite iam mota, ſed agendum eſt contra tertium actione reuocatoria probando fraudem debitoris, qui alienauit. Bar. *in leg. qui miſſum. § iudex ff. de damn. infect. in l. à diuo Pio. § ſi ſuper rebus. ff. de re iudic.* & ibi Alex. *col. 4. verſ. & iuxta hoc reprobando diſtinctionem.* Bal. *in l. ob maritorum. C. ne vxor pro marit.* & opin. Bart. & Alex. ſequitur Socin. *in conſ. 13. col. 1. lib. 4.* Roman. *in conſ. 246. col. fin.* ¶ Igitur ſi ex actis oſtenditur quemadmodum tempore executionis Stephanus appellans poſſidebat, ſi etiam docetur eum non fuiſſe citatum ad executionem per inſpectionem actorum, ad quem modum negatiua probatur Bart. *in l. Titia textores. ff. de leg. 1. not. in l. in illa. ff. de verb. obligat.* Socin. *in d. conſ. 158. col. 3. verſ. ſed ego etiam reſpondeo dorum.* vbi citatio quæ alias præſumeretur contra condemnatum, nunquam tamen præſumitur contra tertium abſentem, quando defendi poteſt nullitas aut ſaltem iniuſtitia illius executionis nimium præcipitis, maxime quia heres non erat litigioſa cum actum eſſet perſonali actione contra debitorem obligatum. ¶ Et ſi dicatur licet Anton. de Auentu. perdiderit poſſeſſionem ob factum conſtituentis qui alienauit, tamen recuperare eam poteſt, tanquam poſſeſſor antiquior, ex remedio *l. fin. C. de acquir. poſſeſſ.* vel ex canone reintegranda, tanquam qui cecidit à poſſeſſione ſine aliqua ſui culpa, imo competit poſſeſſorium recuperandæ etiam amittendo poſſeſſionem per culpam in omittendo, quando quis negleat recuperare poſſeſſionem per obliuionem aut ex negligentia etiam longi temporis. Alex. *in conſ. 90. colum. 2. verſ. præterea ex ſola obliuione. lib. 5. iunctis his quæ dixerat in præcedentibus.* Idem vult Capella Tholoſ. 4. *quæſt.* 487. vbi quod poſſeſſorium ex canone reintegranda, competit his qui ceciderunt à poſſeſſione ex eorum culpa & negligentia. quod intelligo in culpa in omittendo, quæ tertio lucro eſſe non debet, & ſic non ſequitur, poſſeſſio perdita eſt, ergo recuperari non poteſt. ¶ Reſpondeo, quod iſtud procederet ſi fuiſſet actum remedio poſſeſſorio contra ipſum Stephanum, ſed fuit actum iudicio perſonali contra debitorem, & ad executionem iudicati petita executio in bonis condemnati, & facta eſt miſſio in poſſeſſionem illius prædii tanquam de bonis debitoris condemnati, non tanquam in re poſſeſſa per tertium, ſed apparet de falſitate cauſæ, quia iſtud prædium non eſt de bonis condemnati, quia tranſlatum fuit dominium in ipſum Stephanum appellantem, quia hypothecam in fauorem partis non amiſerat ipſum dominium, ſed falſitas cauſæ vitiat executionem quando probatur rem eſſe alterius, vt habetur & not. *in d. §. ſi ſuper rebus. in leg. 1. C. de erro. calcul.* nam Iudex quando facit executionem in aliqua re tanquam in re condemnati, non habet animum præiudicare tertio, & ſi haberet, præiudicare tamen non poſſet ob id tertio, non priuatur ex actu Iudicis ſua ciuili poſſeſſione, licet ſecus eſſet ſi poſſeſſio occuparetur à priuato ſine authoritate Iudicis. vt nut. Bald. *in d. conſ. 149. in fin. lib. 3.* Anch. *in d. conſ. 292.* Alex. *in d. l. ſæpe. colum. 45.* Socin. *in d. conſil. 158.* & cum actum fuerit actione perſonali contra debitorem condemnatum, non poteſt dici intentatum remedium *d. l. fin.* contra tertium, quia perſona extranea non ſubintelligitur. *l. ſi ita ſtipulatus. §. Chryſogonus. in fin. ff. de verb. oblig.* Rurſus, non videtur agi poſſe actione reuocatoria contra iſtum tertium tanquam alienatio facta ſit in fraudem. nam fraus conſiderari non poteſt, quia teſtes loquuntur quod debitor condemnatus poſſidet bona quæ ſufficiunt ad ſolutionem iudicati. Et in omnem euentum ſatis videtur quod hic non agitur ex conſtituto ad recuperãdum poſſeſſionem remedio *d. l. fin.* ſed de executione ſententiæ quæ in bonis condemnati facienda eſt, non etiam tertii. Taurini, 8 Ianuarii. 1535. Aymo Crauetta ex Sauiliano. I.V.D.

SVMMARIA.

1. *Quæ dicatur legitima.*
2. *Statutum poteſt tollere legitimam.*
3. *Dos congrua quomodo intelligatur.*
4. *Filia quando poſſit petere dotem.*
5. *Debitum dotis eſt fortius quam debitum legitimum.*
6. *Verba generalia reſtringuntur ad cauſam, propter quam prolata ſunt.*
7. *Quando pater obligetur pro filio.*
8. *Inducta ad vnum effectum, non agunt contrarium.*
9. *Statutum recipit interpretationem paſſiuam à iure communi, licet ſit contrarium communi.*
10. *Natura exceptionis eſt negare, ſi regula affirmat.*
11. *Ex ratione declaratur voluntas alicuius.*
12. *Forma argumenti à contrario ſenſu.*
13. *Argumentum à paritate rationis eſt fortius argumento à contrario ſenſu.*
14. *An in ſtatutis ſumatur argumentum à contrario ſenſu.*
15. *Abſurdum eſt quod plus ſit in referente quam in relato.*

CONSILIVM CCXXXVI.

Pro nobili Ioanne Familia, ciue Thaurini.

DIVINO ſubſidio ex corde poſtulato. Extat duplex ſtatutum Taurini, vnum quod filiæ fœminæ non ſuccedant in domibus, exiſtentibus filiis maſculis, & nullo facto ordinamento per patrem, alterum quod fœmina dotata vel maritata non ſuccedat ab inteſtato exiſtentibus filiis maſculis. Pater condidit teſtamentum, in quo filias particulariter inſtituit in certis quantitatibus pro dotibus, quibus ſubſtituit filium maſculum heredem vniuerſalem, deceſſit altera filiarum ſine liberis, quæ iura ſua ceſſit alteri ſorori. Iſta ſoror ceſſionaria experitur aduerſus fratrem heredem petendo legitimam, in qua cedens ſoror grauari non potuit, quæritur ſi in computatione legitimæ ſit computanda domus patris, in qua fœminæ non ſuccedunt ex forma ſtatuti? ¶ Antequam veniam ad reſolutionem huius difficultatis, præmitto, quod hic non videtur tractandum de legitima, quia filia excluſa ab inteſtato legitimam petere non poteſt, † nam legitima dicitur tertia pars eius quod 1
ab inteſtato fuiſſet quis habiturus. *l. Papinianus. §. quantum autem quarta. ff. de inofficioſo teſtamento. l. nuper. C. eodem titul. cap. Raynutius. extra de teſtam.* ſed cum filia ab inteſtato non ſuccedat propter ſtatutum, non poterit etiam legitimam petere, cum poſſit † ſta- 2
tutum legitimum in totum tollere, ſecundum communem opinionem. Dynus *in regul. indultum. de regulis iuris. lib. 6.* Feder. de Senis *in conſ. 21. col. pen. circa med. & in conſ. 277. ſa huius ex quo. col. 1. quod tamen eſt conſ. Recuper. de Sancto Miniato.* Oldrad. *in conſ. 107.* Paulus de Caſtro *in conſ. 175. Caſus præſens. ad fin. lib. 1. & in conſ. 348. Vide caſu & allegationib. col. 1. lib. 2.* Bald. Nouell. *in tract. de dote. in 6. part. priuilegio 17.* Cornel. *in conſ. 205. col. 4. in conſ. 123. col. 3. ad fin. lib. 3. & in conſ. 1. col. 4. lib. 4.* Decius *in conſ. 19. colum. penult. in l. iura ſanguinis. ff. de regulis iuris.* vbi dicit hoc procedere ſaltem ex cauſa, & quod ex cauſa poſſit in totum tolli, notat Curtius Iunior *in conſ. col. in fine.* vbi quod cauſa legitima tollendi eſt fauor agnationis quod autem poſſit minui, procedit ſine dubio: in caſu autem noſtro nõ tollitur legitima in totum. quia non excluditur filia, niſi dotata, quæ dos ſuccedit in locum legitimæ. Bar. & Doct. *in l. Titio centum. §. Titio genero. ff. de condit. & demonſtrat.* Corn. *in conſ. 62. col. 3. lib. 2.* Deci. *in conſ. 106.* Et licet circa hoc ſint dubitationes, an dos ſuccedat loco legitimæ ſimpliciter & proprie, ita quod tali doti onus aliquod opponi non poſſit, *iuxta notata in dicto §. Titio genero.* Corn. *in conſ. 2. col. 2. ad fin. lib. 4. in conſ. 1. colum. penult. lib. 2. & alibi ſæpe.* tamen conueniunt Doctores in hoc magis communiter, quod cum ſtatutum poſſit legitimam minuere, ſine dubio, filia dotata excluditur à ſtatuto, non poteſt filia petere ſupplementum legitimæ, reprobata opinione Salic. *in auth. nouiſſima. Cod.*

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de conſi.ſeſſam. vt notat in *l.Gallus.§.& quid ſi tantum.ff.de liber. & poſthu.* vbi Alex.tamen quia ſtatutum excludit filiam dotatam, intelli-
3 gitur de congrue dotata, † congrua autem dos intelligitur vſque ad legitimam ſecundum Doct.communiter, *iuxta notata in dicta auth.nouiſſima.* vbi Iaſ. *ad fin.in auth.res quæ.in 6.notab.C.commun. deleg.* Paul.de Caſtro *in conſ.162.Si ſtatutum.lib.1.* Angel.*in conſ.157. Dominum Georgium.in 4.dubio.* Alexand. *in conſ.69 in primo dubio.lib.1. & in conſ 7.colum.1.lib.1.quod eſt repetitum in conſ.68.lib.6.* Idem tenet Alexand.*in conſ.82.Viſo ſtatuto.colum.1.lib.4.* Curtius Senior *in conſil.16.colum.7.poſt medium & in conſ.27.in quarto dubio.in conſ.38. & in conſ.74.colum.30.in fin.verſ.8.principaliter.* Socinus *in conſ.57.colum.6 in fin.lib.4.* Cornelius *in conſ.4.colum. penult. poſt medium. verſ. & congrua dos. in conſ.40.colum. penult.* [illegible] *fin.in conſ.85.colum. penult.in fin.verſ.inſuper circa hereditatem.in conſ.100.colum.1.verſ.tamen his non obſtantibus.in conſ.20.colum.192.verſ.circa ſecundum autem caput. lib.3. & in conſ.257.colum.penult.lib.4.* Decius *in conſ.106.colum.2. poſt medium in conſ.180.colum.* [illegible] *in fine.in conſ.181.colum.2.circa medium.& in conſil.276.colum.2.* Iaſon *in l.voluntatem.Cod.de fideicommiſſ. & in conſ.69.in fin.lib.1.* niſi aliter eſſet conſuetudo loci, quia dos eſſet conſtituenda maior vel minor legitima, ſecundum conſuetudinem loci, ſecundum Cornel. *in conſ.197.colum.3.in conſ.210.circa finem.in conſ.116.colum.4.lib.1.& alibi ſæpiſſime.* ſed latius Socinus *in conſ.288.colum.7.in quæſt.libr.1.* Baldus Nouellus *in tractatu de dote.in 6.parte.priuilegio 16.col 8.verſ communiter tamen non regimus.* quod tamen intelligo, quando probaretur de tali conſuetudine, etiam mortuis parentibus, quibus viuis dotes minores poſſent conſtitui. Sed enim ſtante conſuetudine, quæ tamen non probatur, dubia videretur opinio Cornel. in caſu de quo agitur, non diſputo tamen pro nunc, quia non expedit, cum pars aduerſa de hoc non contendat. It que [illegible] de-
4 beatur ad menſuram legitimæ, † ſi filia ſuit minus congrue dotata, poteſt petere ſupplementum congruæ dotis, [illegible] ſtatutum vlterius non procedit, iubendo filiam eſſe contentam dote data vel promiſſa. Baldus *in l.fin.C.de dote promiſſa.& in auth. res quæ.C.commun.deleg.* Paulus de Caſtro *in conſil.*[illegible] *libro primo.* Alexand. *in conſil.121.lib.6.* Socinus *in conſil.57.colum.6.poſt medium.libr.4.* vbi loquitur, licet filia à patre dotata ſit. Baldus Nouellus *in tractatu de dote.in 6.part.priuilegio 17.* Cornelius *in conſ.197.colum.3.poſt medium verſ.* [illegible] *maxime de eadem videtur.in conſil.210.circa finem.in conſ.106.colum.4.lib.1.in conſil.160.colum.2.verſic.& licet.* Bald.*in conſ.*[illegible]*.colum final.*[illegible]*.124.ad finem.in conſ.149.colum.*[illegible]*ad fin & in conſ.290.colum.*[illegible] *verſ.item quod debeat.lib.3.* Decius *in conſ.276.colum.penult.* ¶ Quinimo, quando ſtatutum vlterius procedit, iubendo filiam eſſe tacitam & contentam dote ſibi data vel promiſſa, adhuc iſta filia poteſt petere ſupplementum congruæ dotis, quando à patre dos conſtituta non fuit, ſed ab alio de quo lex ſeu ſtatutum non ita confidit, ſicut de patre quod congrue dotet. ita dixit Socin. *in conſil.30.colum.1.in 3.quæſt.lib.1.* Amplius, licet filia non poſſit illo caſu petere ſupplementum congruæ dotis ſaltem quando à patre dotata eſt, tamen quia dos illo caſu ſuccedit in locum alimentorum *arg.in l.pro oneribus.C.de iur.dot.* & not Bart.in *l.cum de in rem verſo ff.de vſur.* poterit filia petere quod suppleatur ei dos ſufficiens ad alimenta, vt notabiliter Socin. conſiderat *in conſil.100.colum.4.circa medium.lib.3.* quod not. quia alibi puto non facile inuenitur. Illud etiam videtur velle Bald. Nouel. *in tract.de dote.in 6.parte.priuileg.17.col.4.verſ.& ex prædictis poteſt concludi.* Idem voluit Angel.de Vbal.de Peruſ. *inter conſil.*Bal.[illegible]*.465* [illegible] *Mantua.in fine.lib.3.* ¶ Præſuppoſito igitur quod peti poſſit ſupplementum congruæ dotis vſque ad legitimam, videndum eſt an in computatione ipſius legitimæ habenda ſit ratio iſtius domus. ¶ Videretur prima facie dicendum quod ſic, quia ſtatutum excludit fœminam a ſucceſſione domorum, nullo facto ordinamento per patrem, ſed hic pater teſtatus eſt, conſequenter videntur ceſſare verba ſtatuti, eius [illegible] diſpoſitio. *l.4.§.toties ff.de dam.infect.l.quod conſtitutum.ff.de teſtam.*[illegible] *cum ſimi. lib.* ¶ Contrariam opinionem puto de iure veriorem. & pro fundamento præſuppono, quod legitima non debetur in bonis, in quibus prohibetur quis ſuccedere, puta non debetur legitima filiabus in bonis feudalibus, [illegible] non ſuccedunt Panorm. *in conſ.12.in dubio primo.facit text notata in auth.*[illegible]*.res quæ. C.commun.deleg.at.* vbi Iaſon *colum.8.* quod etiamſi pater velit non poteſt dotare filiam de bonis feudalibus. Item ſtante ſtatuto quod maritus lucretur certam partem dotis, non habet locum quando res feudalis in dotem data eſt. *cap.1.§.final.de nat.*

de re alien. facit Iaſon *in l.prima.colum.6 ad finem.in 6 limit.Cod.de Summa Trinitate & fide catholica.* Et tamen e[illegible]
dehitum † dotis quam legitimæ, quæ non d[illegible] 5
tre ſicut dos *l.prima §.*[illegible] item ſi fi[illegible] pliciter excluditur a [illegible] propter maſculos, non poteſt [illegible]timam petere, vt ſupra probauimus, & tamen dotem poteſt petere, ſecundum Bald *in tract.l.fin.C.de dote promiſſa.* Bald. Nouel. *in dicto tract.de dote.in 6.part priuileg.16.*[illegible] Decius *in conſ.276.colum.2.ad finem.* Sed [illegible] poteſt ſuccedere in iſta domo, ergo nec legitimam petere [illegible] quæſtionem videtur Socin. decidere *in terminis.in conſil.188.*[illegible] *10.verſic Confirmatur ratione clara lib.2.* vbi [illegible] prohibetur ex ſtatuto ſuccedere in certis bonis alicuius [illegible], quando tractatur de legitima filiæ, in eius computatione non habet [illegible] eorum, in quibus ſuccedere non poteſt ab inteſtato [illegible] ex quo ſucceſſio quæ debetur ab inteſtato, de iure commun[illegible] extincta quo ad illa bona, legitima quæ debetur per [illegible] habito reſpectu ad ſucceſſionem ab inteſtato, ut etiam extincta in aliis bonis, & vltra Socin. facit quod in his quæ ſunt [illegible]cem correſpectiua, ſi vnum ceſſat, ceſſat & alterum. *l.etiam ex cau.a.ff.de minorib.l.filio.§.*[illegible] *ff.de aduen.*[illegible] *Clemens.§ prima.ff.de heredi.*[illegible] *l.final ff.de acceptilat.* [illegible]ma correſpectiuatur ad ſucceſſionem ab inteſtato, & ab [illegible] reſpectu debetur, ergo ceſſante ſucceſſione ab inteſtat[illegible] domo ceſſabit & legitima. Iſta etiam concluſio latius probabitur ¶ Vniuerſa difficultas videtur conſtare [illegible]ſpontionem contrarii, quia hic videntur [illegible] verba ſta[illegible] Ad quod reſpondeo, quod illa verba ſtatuti nullo facto [illegible]namento rerum ſuarum, debent intelligi ſcilicet circa p[illegible]
mos, † quia verba generalia debent reſtringi ad cauſam [illegible] 6
pter quam prolata ſunt. Baldus *in l.1.§.ex*[illegible] *.nam.*[illegible]
ſtabul.[illegible] *in l fi.* vbi Salic. *ff.ad Macedon.* vbi ſtante ſtatuto [illegible] 7
pater obligetur pro filio mercatore, intelligitur quando contr[illegible] ex ob cauſam mercantiæ. notat Alexand. *in*[illegible] *colum.2.*[illegible] Socin. *in conſ.*[illegible] *colum.7.poſt medium.lib.1.*[illegible] Moder. *in l.admonendi.ff.de iureiurando.circa*[illegible] *mercatorum.* nam ſtante ſtatuto quod credatur, reſtringitur ſtatutum in his quæ pertinent ad cauſam mercantiæ. notat [illegible] Decius *in cap.poſt ceſſionem.de probat.* vbi quod fides ſigil[illegible] gitur ad ea quæ pertinent ad officium ſigillantis, per [illegible] *cap.*[illegible] *de appellat.* cum ergo ſtatutum à contrario ſe[illegible] velit quod facto ordinamento rerum ſuarum, mulier ſuc[illegible]dat, intelligitur quando fieret ordinamentum ſuper domi[illegible] ¶ Rurſus, quando diſpoſitio loquitur de aliquo certo, verba debent reſtringi ad ipſum. *l.cancellauerat.ff.de his quæ in teſtament.delen.l.ita autem §.1.ff.de adminiſtr.tut.l.*[illegible] *ff.de ſolem.* igitur ſtatutum vocans filiam ad domos, facto ordinamento per patrem rerum ſuarum, interpretandum eſt & limitandum ad ſuum caſum, [illegible] eſt, ſi ſiat ordinamentum [illegible] ſuper domibus, & ad eas vocetur filia ex teſtamento. ¶ Suadetur iſta interpretatio, quia verba vtcunque generalia reſtringuntur, quando alias induceretur abſurdum. *l.nam abſurdum.ff.de bonis liber.* Imola *in l.ſi vero.§.de viro ff.ſoluto matrimonio.* Socinus *in conſ.84.colum.3.verſ.1.principaliter mouetur.lib.1.* Sed fieret pluſquam abſurdum quod ſi decederet parens ſine ordinamento, filia excludatur à domibus: ſi vero cum ordinamento in quo filiabus relinquat certam quantitatem, in aliis autem bonis inſtituat maſculum, quod filia admittatur in aliis bonis contra expreſſam voluntatem teſtatoris, maxime ſi iuſſit teſtator filias eſſe contentas [illegible], cum minor enim ratio eſt excludendi filias ab inteſtato, quia præſumitur [illegible] quod admittantur omnes liberi, tam fœminæ quam ma[illegible] *l.coniectantur.ff.de*[illegible] *condit.*[illegible] *C.de lib.præter.* quam ex teſtamento vbi voluntas teſtatoris perſpicue demonſtratur. Et quidem veriſimile eſt minime voluiſſe ſtatuentes excludere filiam ab inteſtato, & eam voluiſſe a[illegible] ſucceſſionem domorum admittere [illegible] voluntate [illegible], igitur [illegible]tione veri ſimilitudinis reſtringendum eſt ſtatutum quand[illegible] ordinamentum ſuper domibus, licet loquatur generali[illegible] rebus teſtatoris. *l.ſi quis ita §.*[illegible] *ff.de teſt tut.l.*[illegible] *§.*[illegible] *de pignor.*[illegible] *non enim credibile*[illegible] quem textum ad hoc [illegible] primo citat Alexand. *in conſ.176.Viſo thimate*[illegible] *1.lib.4.* nam mentem ſtatuti potius quam verba [illegible] *l.cum leges.ff.de legibus.cum ſimilib* quæ Iaſon cong[illegible] *bum.in 2.notab.C.de legibus.& alibi ſæpe.facit textum in l.*[illegible] *tab.ff.de pignor.* ſed mens ſtatuentium fuit excludere filiam [illegible]lo

facto

[illegible] à parte ad [illegible], ſed [illegible] vocet [illegible] ex [illegible] diſpoſitionem an excluſio [illegible] intelligitur [illegible], quatamen [illegible] Doctores eam [illegible] in ſtatu. Bal. & Mod. *in l. fin. C. de* [illegible] *pactum quod dotali. Cod. de collat. & in l.* [illegible] *in l. titulo. §. quod ſi cautum ff. de liber. & poſt.* [illegible] *ff. de post.* Cuman. *in conſ. 219.* [illegible] *in fine. ff. de condit.* [illegible] *ff. ad Treb.* [illegible] *column. penult. poſt medium. C. de* [illegible] *lum.* [illegible] vt idem [illegible] plus [illegible] ſtatuto, quibus [illegible] intelligentur, vt [illegible] teſtatoris.

3 ¶ Confirmantur præ[illegible], quod [illegible] non ag[illegible] poſt inſtitutionem [illegible] non [illegible] torquentur. [illegible] *quod ſa* [illegible] *C. cod.* ſed [illegible] ſtatuto editum eſt [illegible] teſtatorum, vt eorum volun[illegible] tenacius cuſtodiantur [illegible] mento per quod filiæ ad do[illegible] conveniuntur [illegible] ſi [illegible] in odium te[illegible] contra eius voluntatem, quod minime [illegible] lemus [illegible] qui [illegible] non [illegible] etiam [illegible] emento, nam intelligitur renunciaſſe ab inteſtato [illegible] teſtamento, nihil probetur [illegible], *ut extant* [illegible] *l. pactum. C. de collat.* [illegible] parte [illegible] filia [illegible] renunciauit [illegible] legitimæ, in portione [illegible] legitima [illegible] potest [illegible] tenetur [illegible] filia per [illegible] domum [illegible] vocata non fuit [illegible]

9 [illegible] ſtatuta [illegible] Alexand. & idem Alexand. *in l. ſi quis pro* [illegible] *ff. ad Trebell.* [illegible] *inter cætera. column. penult.* [illegible] *column. penult. poſt medium ff. de* [illegible] *column. 6. verſ. 4. facit Cod.* [illegible] *in Auth præterea. column. 5. Cod. vnde vir & vxor.* Decius *in cap.* [illegible] *column. fin. verſ. & prædicta. de reſcript.* ſed de iure communi [illegible] prohibetur ſuccedere ab inteſtato, pata, quia [illegible] renunciauit [illegible] ſtionem etiam reſpectu legitimæ [illegible] *l. pactum. Cod. de collat.* licet po[illegible] aliquid [illegible] teſtamento, illud quod [illegible] conſequi potest, [illegible] non poteſt. Eo [illegible] ſtatuto [illegible] domo, licet [illegible] pater fecerit teſtamentum [illegible] domo filiam non vocauit, abſurdum [illegible] reſpectu domus aliquid petere poſſit.

¶ [illegible] licet teneremus opinionem Sal[illegible] contra omnes, quod [illegible] poteſt petere ſupple[illegible] non [illegible] excluſione ſtatuti [illegible] idem [illegible] dum, quæ [illegible] ſecundum communem Doct. poteſt [illegible] eo cum in domibus [illegible] excludantur [illegible] computatione legitimæ non erit habenda ratio domorum in quibus legitimam [illegible] appareat diminuta. ¶ Et cum [illegible] videatur [illegible] contra [illegible] ad illam mentem [illegible] reſtringendi verba [illegible]. Decius *in conſ. 184. column. 1. poſt medium. verſic. & ad* [illegible]. ¶ His accedat quod [illegible] ſtatutum loquatur de [illegible] excludendo [illegible] ad bona, ſi reſeras [illegible] quando quis diſponit de aliis rebus, non etiam de [illegible] pertinens filiarum [illegible] tunc ad [illegible] filias [illegible] intelligantur quod in earum fauorem & gratiam de domibus diſpon[illegible] protecto [illegible] bene conſideremus [illegible] ſtatutum [illegible] [illegible] debet [illegible]

10 [illegible] regula [illegible] ſuccedit [illegible] natura eſt negare [illegible] affirmat, & affirmare [illegible] *cum* [illegible] *C. de* [illegible] ſed [illegible] ſtatutum quod filia non excludatur [illegible] ſed non de domo, illa exceptio [illegible] regulam [illegible] de domibus [illegible] propter [illegible] ſtatutum hoc modo: quod non facto ordinamento ſuper domo filia excludatur, facto autem ordinamento ſuper domo [illegible] non excludatur [illegible] domum ex [illegible] ob quam rationem [illegible] domibus exiſtentibus [illegible] [illegible] ſemper vt domus per[illegible] ſoli conſiderari poteſt [illegible] *Cod. de* [illegible] Paul. de Caſt. *in* [illegible] *col.* [illegible] *verſ. præterea præ* [illegible] *vol. 2.* [illegible] *422. column.* [illegible] teſtator [illegible] [illegible] [illegible] tenderetur. Bart. *in l.* [illegible] [illegible] eodem modo [illegible] [illegible] operetur [illegible] propter [illegible] poſito [illegible] [illegible] Baldus [illegible] videtur [illegible] legatum & omnem diſpoſitionem ex [illegible] adiecta [illegible] *gloſſ. ff. de ſoluto.* Per quæ iura [illegible] Alex. [illegible] ¶ Similiter [illegible] heredis. 11 [illegible] & quartæ [illegible] [illegible] Romani *in conſ.* [illegible] *24.* [illegible] Bald. *in l.* [illegible] reſultat. [illegible] verba [illegible] contrario ſenſu [illegible] ſtatutum, proferuntur, reſpectu domorum, ergo [illegible] *profectu* [illegible] *column. 1. circa medium* ¶ Deinde [illegible] argumentum à contrario ſenſu [illegible] diſpoſitionis [illegible] Butr. *in cap. cum apoſtolicam, in vltim. not.* [illegible] Decius *in l.* [illegible] *ff. de offic.* [illegible] argumentum à contrario ſenſu [illegible] 12 [illegible] ordina[illegible] [illegible] ordinamento [illegible] ergo [illegible] ſenſu directi, aliter [illegible] [illegible] ſtatuti [illegible] ad ipſum [illegible] [illegible] conſiderare [illegible] [illegible] tamen ſenſu [illegible] domibus [illegible] [illegible] mento, filiæ non excluduntur [illegible] [illegible] filiam [illegible] non [illegible] tale argumentum à contrario ſenſu [illegible] contrario ſenſu [illegible] Baldus *in l.* [illegible] *173. lib.* [illegible] quod [illegible] ſtatuto [illegible] eſt eadem ratio [illegible] eſt [illegible] argumenti [illegible] 13 *de vito.* [illegible] *ff.* [illegible] *in conſilio 22. column. quarto. & in conſilio* [illegible]

modo

modo in prop [illegible] o ſtatutum voluit [illegible] al i teſt. [illegible] ordinaret eo, [illegible] Taurini [illegible] ſtatuit in agnatione, qui [illegible] ſtatut [illegible] patria [illegible] ut habeat, tamen nullo [illegible] excludi [illegible] ſi [illegible] do earum parentes vocarent, & ſi [illegible] voluntatem parentum, ſed iſta [illegible] excluſi [illegible] tacito teſtamento, in quo tamen [illegible] vocatæ non fuiſſent quã ab inteſtato quia, [illegible] quando fit teſtamentum, & filias excludentes [illegible] tunc apparet de clara voluntate parentum, quod vo[illegible] apud maſculos, quæ voluntas non æque apparet quando decedunt parentes ab inteſtato. Cum igitur ſenſus contrarius ſit maioris ratio quam in directo, aut [illegible] eadem, eſſet nimis quam abſurdum ſumere argumentum à contrario ſenſu, quia tunc ſumeretur contra mentem & intentionem ſtatuentium, quod eſſe non debet,

14 *iuxta notata in d. l. [illegible] de offic. eius.* † Rurſus, non ſumitur argumentum à contrario ſenſu in ſtatutis quando inductum ad vnum effectum, operaretur contrarium effectum. Bald. *in l. 1. C. de [illegible]* Alex *in conſ. 17. lib. 4.* Decius *in conſ. 100. column. 2.* ſed in caſu noſtro in [illegible] contrarium effectum, quia ſtatutum voluit [illegible] non [illegible] eius libertatem, [illegible] dicimus [illegible] quando teſtator diſpoſuit quidem [illegible] de domo, [illegible] teſtatori oppugnamus, quæ fuit [illegible] haberent [illegible] autem hereditas maneret apud maſculos [illegible] reſponſionibus clariſſim[illegible] videtur præſens difficul[illegible]. ¶ Sed [illegible] ita præmiſſa [illegible] hoc [illegible] textus clarior *in §. quod autem. Inſt. de leg. agnat. tut.* nam lex vocat agnatos ad tutelam, nullo facto teſtamento per patrem pupillorum, textus ibi dicit quod [illegible] verba, nullo facto teſtamento ſeu ab inteſtato, reſtringuntur ad tutelam, cuius reſpectu prolata ſunt illa verba, adeo ſi pater teſtamentum quidem fecerit, tamen de tutela non prouiderit, dicitur ab inteſtato decedere, quem textum ad hoc propoſitum citat Socinus *in conſ. 92. col. 10. ad fin. in lib. 5.* ¶ Poſtremo ex alio non videtur habenda ratio domus in computatione legitimæ, quia poſito quod iſta filia poſſit petere ſupplementum congruæ dotis per ſupradicta, tamen illud non petit, ſed petit ſupplementum legitimæ, quod non debetur filiæ excluſæ ab inteſtato, vt ſupra probaui, & iſtam eſſe magis communem opinionem atteſtantur Doct. vt per Alexand. *in l. Gallus. §. & quid ſi tantum. ff. de liber. & poſth.* [illegible] *in conſ. 3. column. pen. & in conſ. 168. lib. 7.* Socinus *in conſ. 146. column. 4. verſ. 2. fundamentum. lib. 2. quod reperitur inſertum inter conſ.* [illegible] *in conſ. 18.* tradit idem Socinus *in conſil. 89. [illegible] circa medium. & in conſ. 127. column. 2. circa medium. lib. 4.* vbi dicit quod eſt communis opinio fere omnium Doctorum, ex [illegible] dicto Bart. de Salic. hanc etiam opinionem dicit communem Cornelius *in conſ. 316. lib. 1. in conſ. 1. column. penult. in conſil. 1[illegible] in conſ. 150. column. 3. lib. 2. in conſ. 190. lib.* [illegible] *column. 4. lib. 4.* Hanc etiam communem eſſe opinionem firmat Decius *in conſ. 26. column. 2. poſt medium. verſ. nec obſtat quod dic. 295. column. 2. verſ. [illegible] in conſ. 299. column. 2. verſ. eſt ergo videndum. in conſil. 303. circa finem. in conſ. 176. column. 1. poſt medium. & in conſil. [illegible] column. fin.* hanc etiam opinionem tenendam admonet [illegible] *l. ſi quando. §. & generaliter. column. fin. C. de inoffic. teſtam. &c.* hanc opinionem poſt amplam diſputationem tandem probat Brunus Aſtenſis *de ſtat. excluſ. fœm. articul. 9. quæſt. 1. in primo caſu. fol. 41. & artic. 15. quæſt. 3. column. 1. poſt medium fol. 73.* igitur agendo ad ſupplementum legitimæ, videtur egiſſe ſine actione, cum non debeatur iſto caſu, neque ex diſpoſitione hominis neque legis, conſequenter videtur repellenda à iudicio *l. ſi pupilli. §. videamus. ff. de negot. geſt.* gloſ. Bart. & Doct. *in l. vbi pactum. Cod. de tranſact. not. in l. ſi [illegible] ff. de verb. oblig.* Supplementum autem congruæ dotis poſito, deberetur, tamen petitum non fuit, ergo ſuper non petitis ſententia dici non poteſt *l. vt fundus. ff. comm. diuid. [illegible] cap. [illegible] Hoſt. de [illegible]* ſimul etiam quod procedat [illegible] ſola facti veritate inſpecta *l. [illegible] de verb. ſignif. [illegible] in conſ. 155. lib. [illegible]* ete[illegible] quod petam ex vna cauſa & probem aliam hoc ſuffi[illegible] quod obtineam ſuper non p[illegible] videtur du[illegible] ¶ [illegible] illud fundamentum [illegible] quia [illegible] de plano, ſola [illegible] operarum [illegible] poteſt pronunciari [illegible] per ta, ſed [illegible] & [illegible] ex [illegible] in concluſione apu[illegible] de in[illegible] nat petitio [illegible] formam [illegible] intentia [illegible]

ber ſign. Soc. *in conſ. [illegible] in princ. lib.* [illegible] ſupplementum legitimæ [illegible] pronun[illegible] congruæ dotis, ſenten[illegible] congrua commenſuratur ad le[illegible] ratio agentis eſt etiam ad ſupplem[illegible] di debet, non con[illegible] ſuſt [illegible] per D[illegible] *l. de ord. cogn.* [illegible] *in l. petent. C. de pactis* [illegible] teretur ſupplemen[illegible] quia cum prohibeant[illegible] Taurini [illegible] gitima, vt ſupra prob[illegible] ſupp[illegible] congruæ dotis, nam c[illegible] gitimam, & ad eam [illegible], vt ſupra de[illegible] ſed abſurdum [illegible] fieret quod [illegible] in referente [illegible] lato *l. [illegible] ff. de hered. inſtituend. [illegible] ff. de cond. [illegible] ſtrat.* eſſet autem plus, quia legitima vbi [illegible] circa eam computa[illegible] domus, vt dictum eſt, [illegible] *in conſ. 288. col.* [illegible] *lib. 1.* qui Socin. allegat Ant. de B[illegible] *ber quaedam* & vltra Soc. allego [illegible] *in conſ. 11* [illegible] cidit quod Ant. de But. licet [illegible] contentionem [illegible] ¶ [illegible] bus conſequens videtur [illegible] iudicium [illegible] Senatus eius vt ſententiam reuocatam maxime [illegible] modum reſcribendum putaui ad expectatione[illegible] nis Familiæ ciuis Thaurini, acerbius perti[illegible] hanc opinionem pronunciauit magnificus Sen[illegible] Præſide Purpurato excellentiſſimo, ſed ſenten[illegible] in cauſa ſupplicationis, per magnificum & [illegible] excellentia ducali [illegible] & forte bene, [illegible] dentia ſcripta aliter [illegible] gere videantur: nam [illegible] mentum congruæ dotis, non obſtante excluſione [illegible] ceſſione inteſtati, & congrua dos dicitur vſque ad [illegible] timæ, oportet neceſſario dicere quod habeatur ra[illegible] etiam reſpectu domorum, nam ſi dicas quod non habe[illegible] no domorum in computatione legitimæ, quia ab [illegible] tur mulier, ſequeretur quod dos conſtitui non d[illegible] lorem legitimæ, cum legitima non debeatur. Et q[illegible] inſungi [illegible] dote in qua habetur ratio legitimæ habet [illegible] ctus ad omnia bona, licet ab eis excludatur filia ab [illegible] dem haberi debet ratio ad domos licet ab earum [illegible] excludatur filia ab inteſtato, arguendo de toto ad partem, non ſit diuerſa ratio. *l. quæ de tota ff. de rei vendic.* ¶ Et [illegible] opinio, quæ ipſa tutior & benignior videtur, [illegible] garam contrarium quod legitima non debetur [illegible] bus excluditur quis ab inteſtato, quia procedere: arg[illegible] quando ſimpliciter & omnino excluderetur quis a[illegible] ſed hic filia non omnino & in totum excluditur, quia [illegible] tot dos, quæ ipſa dos conuenienter debe[illegible] legi[illegible] effectu conſiderato non excluditur filia a legitim[illegible] ſeruatur ſub nomine dotis. Et [illegible] dicamus, ſe[illegible] ſurdum: finge ciuem Thaurini ſolum reliquiſſe [illegible] hereditate, ſequeretur quod in taxatione domum nulla [illegible] tur ratio legitimæ, quia a domibus filiæ excluduntur [illegible] det in melius ſententiam mutare, quia malo ipſum me co[illegible] ſe[illegible] ab alijs corrigi. & talis eſt humanæ iuris diſciplina, q[illegible] nulla in ea opinio diu in eodem ſtatu manere poteſt. *l. 2. §. quia diuerſa. C. de veteri iure enuclean. & probatur in l. [illegible] ff. de [illegible]* Ideo Rota varia & contraria iudicia tulit diuerſis tempo[illegible] & dicit Bald. *in conſ. 477. Recolo. in fin. lib. 5.* quod iunior conſu[illegible] vt iuuenis. Iudices tamen pleroſque vidi & ipſos ex [illegible] opinione in malam quam ſemel imbuiſſent adeo [illegible] glo[illegible] cuiuſdam ſtultæ rationem haberent potiu[illegible] quam [illegible] tis. [illegible] iudicium [illegible] quis dixerit, an non [illegible] mutatione in illis quærere, potiuſquam rationem illius apud ſummum & æternum omnium Iud[illegible] red[illegible] e. Illam autem varietatem [illegible] auctore non approbe[illegible] quæ [illegible] ab æterna [illegible] ditate, non ab [illegible] immunitate p[illegible] cedat. T[illegible] die [illegible] Ianuarii. 1555.

S V M M A R I A.

1 *Conſuetudinis [illegible]*
2 *Quando quis [illegible] dotem adiudicata [illegible] dotis ratio [illegible]*
3 *Petens terminum ad [illegible], cenſetur ratificare & approbare [illegible] tum.*

C[illegible]M CCXX[illegible]VII.

An ſoror poſ[illegible] ab emptore prædium alienatum & commune.

DIVINO ſubſidio ex corde poſtulato. Frat[illegible] dum in [illegible] communione ageret cum ſorore, & penit[illegible] æmula[illegible] alienauit quo[illegible]dam prædium c[illegible], d[illegible] ad [illegible] bonorum communium [illegible] pro diui-ſio[illegible] ab [illegible] iudicium [illegible] due[illegible] emptore[illegible] co[illegible] dimidiam partem prædii [illegible], quæritur [illegible] puto [illegible] concludendum non [illegible] de-[illegible]. ❡ Primo ipſa ſoror præſumitur [illegible] aſſe ipſam a-lienationem & [illegible] tacitum, [illegible] qui con[illegible] præſumitur ſcire tacita consentit. *l. octaui. ff. vnde cogna[illegible] de in [illegible] reſti. minor.* quod ſine dubio proced[illegible] in [illegible] tantibus. Ancha. *in conſ.* [illegible] *princip.* [illegible] *col. fin.* Aret. *in conſil. 29. colum. 5. verſ. aliquando tutor all[illegible] in l. con-ſenſu.* [illegible] *C. de repud. & in l. ad infirmi* [illegible] *in conſ. 264. colum.* [illegible] *ad fin. verſ.* [illegible] *lib. 2.* Sed quando commune [illegible] patitur [illegible] præſumitur conſentire fauore commun[illegible] *ſeruum commu-nem in fin. ff. de dona. inter vir. & vx.* Barto. *in l. quæ dotis. colum. 5. ff. ſo. lu. matr.* & ibi Iaſ. *colum. 11. verſ. 3. caſus not. in l. cum proponas. la. C. de pact.* ❡ Imo præſumitur conſenſus ratione ſolius amicitiæ aut affectionis, vbi alias diſſenſus præſumeretur. Alexand. *in conſ. 1. col. 4. verſ. accedit & alias* [illegible] *lib. 3.* [illegible] *in d. l. quæ dotis. col. 13.* ❡ Et ad præſumendum conſ[illegible] non requiritur præ-ſentia, ſed ſcientia ſola videtur ſufficiens. [illegible] *in conſ. 41. colum. 2. circa fin.* [illegible]. Sed quod [illegible] ſcientia ſuperueniens non ſufficiat, vi-detur [illegible] *l. quæ dotis circa fin. ver.* [illegible] *quæro. quid ſi ſum præſens* Soc. *in conſ. 107. col. 4 circa fin. verſ. præterea* [illegible] 104. poſt Bart. [illegible] *in d. l. quando* [illegible] *colum. 4. poſt med. verſic. quæro. quid de* [illegible] *ſcientia* [illegible] idem Bart. *in l. quo enim. ff. rem ratam hab.* Io. An[illegible] *in cap. 1. de deſpon. impub. lib. 6.* Curt. Iun. *in tract. feud. in 7. parte. quæſt. 5. col. 2. in fin. har. 50.* Sic cer-tant ex ſcientia ſuperueniente [illegible] qui non debet [illegible] puta Epi-ſcopus contulit beneficium indigno ignoranter, quem poſtea ſc[illegible] indignum. *gloſſ. in Clem. 1. in verſ. ſcienter. de conſang. & affi.* Bald. *in con. 410. In cauſa & quæſtione* [illegible] *col. 2. circa med. & ad fin. conſ. lib. 2.* Dec. *in c.* [illegible] ❡ *clerici. colum. 1. in fin.* [illegible] Quod tamen non procederet quando poſt ſcientiam ſuperuenientem inter-uenire factum prohibitum: puta contraxit [illegible] matrimonium prohibitum ignoranter, deinde ſuperueniens [illegible] ſcientia prohi-bitionis adhuc perſeuerat in eo, nam punitur [illegible] quo poſt ſcien-tiam non abſtinet *l. qui contra. C. de inc. nup. cap.* [illegible] *de clande. deſponſa.* ❡ Secundo ex teſtimonio Ge[illegible]rgii Laurentii de Salu-tiis quarti teſti[illegible] oſtenditur quomodo ipſa incolina agens man-dauit illi [illegible] emptorem, & quod de emptoris pecunia [illegible] ſatisfactum, con[illegible] quenter ipſa incolina videtur ipſum exe-giſſe, [illegible] per eam ex[illegible] in contractum ratificaſſe. *l. quidam ex* [illegible] *gloſſ. ff. de* [illegible] Bal[illegible] *in conſ. 184. Ad intelligentiam. verſ. nunc re-* [illegible] *propoſitum. libr. 1.* nam mandando ſolui de precio empti[illegible] ex ipſo contractu emptionis, & [illegible], ideo cenſe-tur ipſam [illegible] emptionem [illegible] approbare. Bald. *in conſ. 549* [illegible] *colum.* [illegible] *ad fin. libro 1.* ❡ Similiter, quando quis accipit bona ſibi [illegible] illud ratificare. Paul[illegible] de Caſtro. *in conſilio 116.* [illegible] *compromiſſo. columna. pen. ad fin. libro 1.* ❡ Alibi ſcribit idem [illegible] *in conſilio 380.* [illegible] *col. nona fin. libr. 2.* quod recipiens penſionem pro contractu lo-cationis, cenſetur ipſam locationem approbare per text. [illegible] *C. de iure emphy.* Cy[illegible]. & Bal. *in l. 2. C. de dotis promiſſ.* ſed iſta mulier ſatis videtur accepiſſe precium mandando illud ſolui nomine ſuo, quia actus attribuitur mandanti, non exequenti. *capitul.* [illegible] *de appellat.* Bald. *in conſilio 368. Nunc venio. columna 1. ad fin. libro 1.* ❡ Sed magis in terminis facit text. *in l. ſi pars. §. illud l. pen. §. fin. & [illegible] fin. ff. de inoffic. teſtament.* Bartol. *in l. poſt legatum. ff. de his quibus vt indig.* [illegible] & Doct. *in l. alia. C. eod. titul.* vbi quis petit vel retinet bona ſibi re-li[illegible] in teſtamento, cenſetur ipſum [illegible] approbare, ſed iſta incolina ſatis petiit & recepit precium illius contractus mandando illud ſolui creditori, ſimile videmus in eo qui con-tractum [illegible] poterat [illegible] ſi ex eo contractu pre[illegible] recipiat, cenſetur remittere [illegible] *l. poſt litem.* [illegible] *ff. de* [illegible] *commiſ. l. Celſus. in prin.* [illegible] *in l. 2. Cod. de iure emphyt. de domino recipiente penſione* [illegible] *poſt commiſsionem* [illegible] *l. Paulus reſpondet, non tantum* [illegible] *ff. rem ratam habe.* & quæ

De[illegible] mandauit [illegible] de [illegible] tatem [illegible] primo [illegible] pe[illegible] & per numerem breui manu [illegible] *fin. daria* [illegible] Angel. *in l. vnum ex. C. quod met. cauſ.* vel qu[illegible] & [illegible] *in l. ad* [illegible] ❡ Alibi [illegible] *in* [illegible] *47. colum.* [illegible] operam [illegible] mandet [illegible] tempore [illegible] ſe-ture [illegible] quod nota glo. Inno. [illegible] vbi quã-do [illegible] iuuen-tum [illegible] Aret. *in conſ. 101.* [illegible] *ſequ.* [illegible] ratione vtilitatis ex [illegible] vbi non agitur [illegible] ex illo contractu, quia de [illegible] & habita eſt [illegible] precio ſorori numerauit aut alii eius no[illegible] ſatisfieret, ergo, & [illegible] ❡ Probatur etiam [illegible] recepiſſe ſeu de precio participaſſe, qui [illegible] te contractus, ipſi frater & ſorori [illegible] perſeuerarunt, & quod frater qui ve[illegible] precium, frumentum comparauit ad communem vtil[illegible] præſumitur ex ipſo precio [illegible] precium ad communem vtilitatem. nam [illegible] Ec-cunia opus habuiſſe, precium redacti [illegible] alienatione rei Ec-cleſiaſticæ præſumitur conuerſum in [illegible] vt notatur *in Authent. hoc ius porrectum. C. de ſacroſanct. Eccl.* [illegible] *in d. cap.* [illegible] Anchar. [illegible] *penultima. circa finem libr.* [illegible] ❡ Rurſus, [illegible] precium granum ad vſum domus [illegible] comparatum ex precio rei alienatæ. Baldus *in conſ.* [illegible] *colum. 1. lib. 5.* ergo ſi iu-ris præſumptione, imo vero ex ſupradictis, [illegible] mandauerit emptori, vt precium ſolueret, ſciebat ſoror alienationem rei, & ex eius precio emptum granum, & [illegible] in communem vtili-tatem conuerſum, non poteſt dici non ratificaſſe contractum, & per malam fidem verſari eius [illegible] captando [illegible] imo ex eo ſolum quod vtilitas & commodum peruenit ad i-pſam ſororem ex contractu fratris, per [illegible] ex grano empto de precio prædii [illegible] ratificaſſe: nam ſi inducitur [illegible] ptione [illegible] tis in pœnalibus. Antoniu[illegible] *columna penultima.* [illegible] Ioannes decit. *columna* [illegible] contractum, qui vſſit [illegible] agatur. ❡ Tertio, ex quo [illegible] ob cauſam prædii alienati, cenſ[illegible] illud pactum compe[illegible] communem poteſt alter vel pars [illegible] precium ad ratam reperit re. *gloſſ.* [illegible] *Cod.* [illegible] cum ergo illa [illegible] de præſenti [illegible] per [illegible] ſionem remiſſa, licet [illegible] ſi ſcit commiſſo puro [illegible] caro. Bartol. *in l. qui Romæ. §. duo fratres. ff. de verborum obligation.* Baldus *in conſilio 46. Verba iuſtitutio.* [illegible] *colum. 1.* [illegible] Anan. *in conſilio* [illegible] *in vltimo dubio.* Decius *in l. iam proponas.* [illegible] *Cod. de pactis. in conſilio 7*[illegible]. *& in conſilio 267.* [illegible] ius ad ſe [illegible] ſuſpoſſeſſore [illegible], quia ſi ſuccumberet, precium numeratum re-cuperaret a fratre vendente, & [illegible] quod non eſt dicendum. *l. quotiens. ff.* [illegible] per in-directum inquietaretur frater, *contra reg.* [illegible] *de regulis iuris. libro ſexto.* & quia ius ſuperueniens authori prodeſt ſingulari eius ſucceſſori. *l. emptori.* [illegible] *ff. de act. emp.* Doctores *in l. prætor* [illegible] qua [illegible] gem [illegible] & [illegible] illud ob-tinet, quia [illegible] videtur [illegible] Bartol. [illegible] ctore *in l.* [illegible] *Cod. quia* [illegible] *tur. vbi late.* [illegible] ❡ [illegible] quia act[illegible] comp[illegible] trem tantum ad precium, quia aduerſus poſſ[illegible] magere non poterat, cu[illegible] nationem cenſeatur ratificaſſe, *iuxta notata in l.*

[illegible] *l. mater* [illegible] *de* [illegible] *col.* [illegible] 44 [illegible] *in conſ.* 135 *colum.* 2. [illegible] in diuiſione verbi [illegible], vt [illegible] oſtendi, [illegible] contra agere ad [illegible] §. *ſi ven-ditor.* [illegible] *ſi negauerint* [illegible] *Cod.* [illegible] *caput. quam periculoſum.* 7. *queſt.* 1. [illegible] 535.

SVMMARIA.

1 *Vniuerſitas* [illegible] *rerum ſuarum* [illegible] *habet poteſtatem.*
2 [illegible] *non* [illegible] *neceſſarium,* [illegible]
3 [illegible] *ſpeciale mandatum.*
4 [illegible]
5 [illegible]
6 [illegible] *de iure* [illegible] *de conſuetudine.*
7 [illegible] *principium omnium* [illegible]
8 [illegible]
9 [illegible] *naturale*
10 [illegible] *rerum.*
11 [illegible] *habet conſuetudo* [illegible]
12 [illegible] *adimpleri purgatur.*
13 [illegible]
14 [illegible] *in periculo ſemper eſt*
15 [illegible] *debet reddi* [illegible]
16 *Imponere* [illegible] *de re publica.*
17 *Quando* [illegible]
18 *Pater debet* [illegible]

CONSILIVM CCXXXVIII.

Pro communitate Gruglaſchi contra Vicarium Taurini.

DIVINO ſubſidio ex inde poſtulato. Vicarius Taurini vult viſitare homines [illegible] Gruglaſchi, à quibus vult percipere per tempus viſitationis dum libris rationum communitatis vtuntur, ipſis ſubditis inuitis. quæritur quid iuris. ¶ Videretur dicendum prima fronte locum eſſe viſitationi, nam officialis aut defenſor loci habetur loco patris. [illegible] *in fin. C. de debit. ciuit. lib.* 11. §. [illegible] *in auth. de* [illegible] *in auth.* [illegible] *in auth.* [illegible] ergo ſicut pater [illegible] habet, quomodo ſe habeant in eorum negotiis, ita [illegible] officialis circa ſubditos, vt videat probe an negotia publica adminiſtrentur. ¶ Secundo videtur text. *in l.* [illegible] *C. de iure fiſc. lib.* 10. Vbi calculatio aut computatio facta per tabularios [illegible] adminiſtratorem [illegible] publicæ, effectum executionis non habet, niſi fuerit à iudice aut [illegible] comprobata. ¶ [illegible] quod procurator [illegible] habet adminiſtrationem & circa redditionem rationum, alias vana & ſuperflua eſſet ipſius procuratoris ſententia. ¶ Tertio ad officium Vicarii aut rectoris loci pertinet prouidere vt ne debiliores à potentioribus opprimantur. *l. illicitas.* §. *ne potentiores. ff. de offic.* [illegible] & ad rectorem loci ſpectat defenſio ſimplicium perſonarum cum [illegible] eorum, qui ſibi auxiliari nequeunt [illegible] *in auth. vt ſi quis* [illegible] *in fine.* Et ita per has rationes [illegible] Guido Papæ *q.* 631. *colum.* 7. [illegible] *dub.* Poterat Papæ allegare Bald. *in conſ.* 586. [illegible] *lib.* 1. [illegible] quod obuiandum eſt fraudibus, ne vulpina ſimplicitas comedat [illegible] ¶ Quarto vltra Guid. Papæ adduci poteſt quod [illegible] Bart. [illegible] *in l.* 4. §. *hoc autem* [illegible] *ff. de dam.* [illegible] vbi quod [illegible] ſuppleri ex officio in his in quibus vertitur vtilitas publica, [illegible] intereſt vt bene gubernetur, & vt adminiſtratores male gubernantes puniantur. [illegible] *ad legem Aquil.* & [illegible] publicæ [illegible] & priuatæ [illegible] *l. ſi libertus. ff. de* [illegible] interpretatio lata fieri debet, vbi agitur [illegible] *l.* 1. §. [illegible] *de* [illegible] Dec. *in conſ.* 196. *colum.* [illegible] ideo [illegible] propria [illegible] & de [illegible]

[illegible] apparente non

[illegible] bonis [illegible] & [illegible] fastidium [illegible] penitentia [illegible] licentia [illegible] Vicarius [illegible] nostrum [illegible] circa adm[illegible] interuentus ſuper [illegible] neceſſarius [illegible] alienando [illegible] *conſil.* 5. *colum.* [illegible] *lib.* 4 [illegible] modi rationes [illegible] videtur [illegible] in ſe ſolutionem [illegible] *quia rationes. ff. de lib.* [illegible] Sed ſolutio [illegible] poteſt [illegible] bet aliquam [illegible] Syndicus [illegible] *ta. gl. in l. mandato generali, in gloſ.* [illegible] *de procur.* [illegible] *text.* [illegible] *colum.* 4. *ff. de minoribus. in l.* [illegible] Decius *in conſ.* [illegible] poteſt Syndicus [illegible] puta poteſt petere reſtitutionem in integrum [illegible] de Aret. *in l. vana. Cod. etiam procur.* [illegible] *poſtulatos in dict. l. praeſes. colum.* 3. *& in conſ.* [illegible] Et † tamen reſtitutionem in integrum petere non poteſt [illegible] mandato. *l. illud.* [illegible] *ff. de minor.* [illegible] ueritatis tranſigere quando cauſa [illegible] *in d. l. praeſes.* & per Dec. *in d. conſ.* 197. [illegible] poteſt deferre iuramentum *dicta l. iuſiurandum.* & [illegible] *deſenſor.* & tamen in talibus requiritur [illegible] habet [illegible] *loco.* † Et qua ratione poteſt Syndicus [illegible] in cauſa dubia etiam poteſt compromittere. [illegible] *colum.* 2. *poſt medium. lib.* 1. Similiter [illegible] tis poteſtatem circa [illegible] *vers. ſed hodie. ff. quod cuiuſ. vniuerſ.* [illegible] quod Syndicus [illegible] ſolum poſſit & [illegible] dictos [illegible] tum, [illegible] datum, quia [illegible] poteſt [illegible] *procuratore* [illegible] ſolutionem [illegible] *ff. de pactis* [illegible] quod procuratori habenti [illegible] ſolui poteſt, [illegible] laſtio & [illegible] ſicatio loco [illegible] de iure & [illegible] cia[illegible] intereſſe [illegible] quia [illegible]

ff. de legibus. l. minor autem magiſtratus ff. de minor. l. eos. §. ne liceat. C. de vſuris. l. nam & magiſtratus. ff. de arbitr. l. formam. C. de officio præf. vrbi prætor. cap. cum inferior. de maior. & obed. cum ſimilibus. Et qua ratione non poteſt inferior iuri communi derogare, eadem non poteſt ius conſuetudinis tollere, aut illi præiudicare, quia dicitur conſuetudo ius poſitiuum, licet non ſcriptum, differens à iure communi ſolum pro vt tacitum ab expreſſo. *§. ex non ſcripto. Inſtit. de iure naturali gentium & ciuili.* Ideo valet argumentum de conſuetudine ad legem. *l. 2. ff. de ſponſal. l. illud.* vbi Bart. *ff. de excuſ. tutor.* Curt. *intra. l. feud. in 1. part. quæſt.* 4. Poteſt enim conſuetudo fa-
6 cere de prohibito permiſſum, & econtra, † ideo eligibilis de iure communi fit ineligibilis de conſuetudine, *cap. cum olim. & ibi not. de cler. coniug.* Similiter habilis ad contrahendum matrimonium de iure, fit inhabilis de conſuetudine. *cap. ſuper eo. cogna. ſpir.* Oldrad. *in conſ.* 105. *Videtur dicendum.* hinc videmus dari iuriſdictionem per conſuetudinem. *l. 1. & l. fi. C. de emancip. lib. l. pen. C. de iure [illegible] lib. [illegible] l. neminem. C. de ſuſceptor.* & Arch. *eod. lib.* Oldr. *in conſ.*
7 9. *Poſito. colum. 2. in fin.* † nam dicitur conſuetudo omnium iuriſdictionum origo, forma & principium. Bal. *in conſ.* 439. *Amplius. col. 5. circa med. lib.* 3. & habet conſuetudo vim derogatiuam, interpretatiuam & limitatiuam Abb. *in conſ.* 16. *colum. 2. in fin. lib. 1. per gloſſ. in d. §. ex non ſcripto. Inſtit. de iure natur. gent. & ciuil.* imo nulla lex poſitiua eſt, quę per contrarium conſuetudinem non tolli poſſit. Bald. *in cap. imperialem. §. præterea ducatus. de prohib. feud. alien. per Feder.* Abb. *in conſ. 7. colum. 5. in fin. lib. 2.* & licet legum Romanorum non ſit vilis authoritas, nó aden tamen vim ſuam extendunt, vt vſum vincant aut mores. Bald. *in conſ.* 252. *Viſo quodam arbitramento. colum. 2. lib. 2. per text. in cap. Vbertus. de feudi cognit.*
8 Aequiualet enim conſuetudo veritati. Bald. *in conſ.* 439. *Amplius. colum. 4. libr. 3. & in conſ.* 189. *Quia conſuetudo. lib. 4.* & vim pacti habet conſuetudo. Bald. *in conſ.* 175. *Quod pro regul. colum. 1. & in conſ.* 318. *Quidam nobilis habens feudum. colum. 1. in fin. lib. 2.* & quando ſumus in iure conſuetudinario, quod ſeruatum eſt præteritis temporibus, ita ſeruari debet. *l. ſones. ff. de pollicitat.* non enim quæſtio eſſe noua poteſt, quæ antiquitus per conſuetudinem eſt definita. *capitul. certificari. de ſepul.* Ita Bald. *in conſ.* 132. *Præſuppoſito quod mater. poſt medium. lib. 1.* Alibi ſcribit idem Baldus *in dicto conſ.* 439. *Amplius. colum. 4. in fin. lib. 3.* quod ſeruanda eſt con-
9 ſuetudo in cunctis peragendis. † eſt enim conſuetudo forma rei, & quaſi ius alterum naturale, & conſueta transmutari non poſſunt. ¶ Alibi ſcribit idem Baldus *in d. conſ.* 318. *Quidam nobilis. lib. 2.* quod non ſeruans morem antiquorum, non ſeruat ho-
10 norem eorum. † A quo maxime Principes ſucceſſores debent cauere, & dico valde cauere, nam conſuetudini, ſicut ipſi matri debet reuerentia adhiberi, & ius omne quo mundus regitur, in duas partes diuiditur, maxima autem pars eſt conſuetudo, adeo quod æquiparatur iuri naturali, quod eſt immutabile. Alibi ſcribit idem Baldus *in conſ.* 258. *Factum ſuper quo. colum. 2. lib. 4.* quod non valet ſtatutum vbi conſuetudo valere non poteſt, tum a leo eſt potens & efficax conſuetudo, quod punitur tranſgreſſor legis. *cap. in. o. diſtinct.* Feder. de Senis, *in conſ.* 151. *colum. 1. in fine.* Itaque Vicarius Taurini ſicut à legibus recedere non po-
11 teſt, i nec ab obſeruantia conſuetudinis. † Solus enim Princeps habet conſuetudinem ſub pedibus eius vt eam poſſit reuocare. Baldus *in conſ.* 388. *Si Princeps. in conſ.* 451. *Super eo. colum. 1. circa finem. lib. 4. & Ianua in conſ.* 439. *Circa primum punctum. in fin. eodem. lib. 4.* Qui [illegible] to, aut Vicarius Taurini vult interuenire in iſtis redditionibus rationum hominum Gruglaſchi ex iure quod habet in rebus & finibus ipſius communitatis, & non poteſt, quia ius nullum habet, imo etiam Princeps ius non habet in bonis & rebus ſubditorum niſi reſpectu ſuperioritatis & iuriſdictionis, vt habetur per Doctores *in l. final. C. ſi contra ius vel vtilit. p[illegible] l. & in c. 19. quæ in Eccleſia. de conſtit.* Aut vult interuenire Vicarius Taurini in iſtis redditionibus rationum, ratione iuriſdictionis, vt animaduertat in adminiſtratores reipublicæ perperam, aut improbe adminiſtrantes, & hoc facere non poteſt niſi per viam aut accuſationis aut inquiſitionis ex officio. Per modum accuſationis non poteſt nullo conſtante accuſatore, ſine quo regulariter puniri nemo debet. *l. reſcripto. §. ſi quis actu auorum. ff. de mun. & honor.* vbi gloſſa citat verbum Domini, Quis te accuſat: nemo Domine, &c. hic communiter dicitur, ſi legitimus non fuerit accuſator, non fatigatur accuſatus. *cap. 1. de accuſat.* ¶ Similiter procedere non poteſt Vicarius Taurini per modum inquiſitionis, non præcedente aliqua diffamatione contra homines Gruglaſchi de mala adminiſtratione, contra quos ſine indiciis inquiri non poteſt. *l. iuſtiſſimos. C. de officio rectoris prouinciæ. cap. qualiter & quando. 2. de accuſat.* Bartol. *in l. congruit. ff. de officio præſidis. cum ſimilibus.* vt per Alexand. *in conſ.* 120. *imprimis. lib. 7.* Decius *in conſ. 170. colum. 2. in conſ. 175. & in conſ.* 189. imo procedi non poteſt ad inquiſitionem non præcedentibus fama aut indiciis, etiam ſi vigore ſtatuti habeat poteſtas facultatem libere inquirendi. Baldus *in cap. 1. per illum textum in verbo liberam. cum gloſſ. de officio ordinarii.* ſequitur Iaſon *in l. milites. in fine. C. de teſtamento militis.* Odioſum eſt enim officium inquiſitionis & cuntrarius ciuilium regulatum. Baldus *in conſ.* 355. *Statuto ciuitatis cauetur quod nullus. colum. 1. in fin. lib. [illegible]. quod eſt repetitum in conſ. 426. libr. 5.* & ſi requiruntur indicia & diffamatio quando inquiritur contra priuatas perſonas, quanto magis quando inquiritur cõtra publicos adminiſtratores, pro quibus magis præſumitur ratione publici officii. *l. 2. in verſ. quod non arbitramur. C. de officio ciuil. iudicum cap. in noſtra. de procurat. cap. in præſentia. de renunciat.* nec militat ſuſpicio contra plures quæ contra paucos, q[illegible] † ratione ad- 12
iuncti purgatur ſuſpicio. *authent. ſi vero contigerit.* vbi late Moder. *in 2. not. ab. de iudic.* Et profecto ſi quid [illegible] ſum eſſet contra adminiſtratores communitatis Gruglaſchi, pluſquam veriſimile eſt quod aliqua diffamatio & querela laboraret contra eos, quia non eſt veriſimile quod alii de locu velint facere iacturam rerum ſuarum. *l. cum de indebito. ff. de probatio.* ſed occaſionem captat officialis de ſuſpicione, vt procuretur ab hominibus Gruglaſchi cum quæſtu aliquo. Sed hoc dicet aliquis, Vicarius Taurini non vult procedere contra homines Gruglaſchi per viam accuſationis aut inquiſitionis, ſed per viam ſimplicis viſitationis, vt videat quomodo tractentur negocia publica, ſi illa ex fide bona gerantur, quod ius viſitandi competit ordinatus. *dicta l. congruit. ff. de officio præſidis. cap. decernimus epiſcopum. & cap. placuit. de decima quæſtione. cap. Romana de cenſibus lib. 6.* imo videtur viſitatio de iure diuino, Pſalmo quinquageſimo octauo, Viſita omnes gentes, & non miſerearis omnibus operantibus iniquitatem. Oldrad. *in conſ. 204. prima quæſtione. colum. 2.* ¶ Ad iſtud reſpondeo duobus modis. † Primo, quod ius viſitandi com- 13
petit ordinario cui ius competit adminiſtrandi, & cui non competit ius adminiſtrandi, non competit ius viſitandi. Baldus *in conſ. 157. proponitur quod quidam locus. lib. 3.* ideo Epiſcopus viſitat Eccleſias, quia adminiſtratio huiuſmodi Eccleſiarum pertinet ad eum. *cap. ſic quidam 10. quæſt. 1. & ſequent.* & poteſt epiſcopus ex cauſa rationali auferre vni Eccleſiæ & dare alteri. *cap. tua. & cap. ſequen. à contrario ſenſu. de his quæ fiunt a præ. Latu. cap. conſtitutum. de religioſ. domib. cap. 1. de rebus Eccleſ. non alien. lib. 2. in cap. prohibemus. de cenſib.* Cald. *in conſ. 3. in tit. de rebus Eccleſ. non alienan. lib.* ſed officiario loci non competit ius adminiſtrandi bona & negocia Reipublicæ, quæ ad eum non pertinent, ergo nec ius viſitandi, hinc videmus quod de iſta viſitatione non loquuntur iura inter laicos, ſed circa Eccleſias. ¶ Secundo reſpondeo, quod iſtud ius viſitandi ſubditos laicos per officiarios ſæculares, non eſt in vſu, ideo talis nouitas introduci non debet per inferiorem, quia nouitates ſunt fugiendæ. *l. in rebus. & l. minime. ff. de legibus cap. cum conſuetudinis. de conſuetud. cap. quod dilectio. de conſang. & affin.* & reprehendendus eſt Vicarius Taurini talem nouitatem inducens, aut inducere captans. *cap. final. 11. diſt.* ¶ † No- 14
uitas enim in periculo ſemper eſt. Anton. de Butr. *in cap. n[illegible] de. de conſang. & affinit.* Verum. *in conſ. 34. col. 3. in fin.* imo arguitur fraus ex nouitate, quando quid tentatur contra antiqua & conſuetudinem. Antun. de Butr. *in conſ. 42. Viſo puncto & quæ ſunt prædictis. colum. 1.* itaque ceſſante cauſa talis nouitatis nullis præcedentibus indiciis, nulla ſtante diffamatione contra homines Gruglaſchi, ſuſpicio videtur laborare contra Vicarium Taurini, quod captet talem nouitatem, non ex fide bona aut ad bonum finem, ſed quæſtus ſui gratia, ſicetiam noua ſeruitia à vaſallo ex actu, per vim præſumuntur extorta. Socin. *in conſ. 157. colum. 4. verſ. præterea ad petendum. lib. 2.* & maxime vitanda eſt nouitas per quam tertius incommodatur. Paul. de Caſtr. *in conſ. 50. Vt plene. colum. 1.* ſed hic communitas Gruglaſchi valde incommodatur & damnum ſuſtinet propter diſpendia & ſumptus viſitationis. ¶ Tertio reſpondeo, quod Vicarius Taurini non inſtat ſuper viſitatione ſimplici, imo prohibet hominibus Gruglaſchi vt ne procedant ad actum redditionis rationum ſine eius interuentu & aſſiſtentia, quæ ipſa res abhorret ab omni iure & † conſuetu- 15
dine, cum redditio rationis officialis loci fieri non debeat, ſed Syndicis, vt ſupra dictum eſt, & ita ab omni æuo dicitur obſeruatum. quam conſuetudinem & iuris diſpoſitionem inferior

violate non poteſt, vt iam dictum eſt. ¶ Quarto reſpondeo, quod ſi bene ſtaret Vicarius Taurini ſuper viſitatione ſimplici, & illa haberi poſſet, dico quod fieri deberet expenſis petentis ipſam viſitationem, donec exitus cauſæ aliud moueat, nã quoties quis fieri quid petit, id expenſis petentis factum oportet. *l. quoniam liberi. C. de teſtibus.* Bart. *l. 3. §. deſinde in fin. ff. ex quib. cauſ. in poſſ. eatur. & in l. ſi poſtulauerit in princ. ff. de adulter.* Bald. *in l. generaliter §. his de præſentibus. C. de rebus creditis. & in l. prætor ait. §. fin. ff. de edend.* Quod ipſum ſuademit ratione naturali, nam per viſitationem aut comperietur adminiſtratores veraces ex fide bona, & iniquum [illegible] retur expenſarum diſpendium Rempublicam Gruglaſchi ſine cauſa ſuſtinere. Aut arguentur adminiſtratores in [illegible] [illegible]la, & tunc ab ipſis petendæ ſunt expenſæ tanquam victis. ¶ Cæterum iniquum videretur Rempublicam grauari diſpendio expenſarum ea delicto adminiſtratorum, quia pœna ſuos authores tenere debet. *l. ſancimus. C. de pœnis.* nec alteri per alterum conditio iniqua afferri debet. *regul. non debet. ff. de regul. iur.* & in terminis adminiſtratoris, quod eius delictum domino non noceat tradit Paul. de Caſtr. *in conſ. 421. Quia ne[illegible] colum. 5. lib. 1. per text. in l. ſed ex dolo §. 1. in fin. ff. de dolo.* Itaque Vicarius Taurini aut habet inſtigantem qui inſtet viſitationem fieri, & habenda eſt [illegible] ſumptibus inſtigantis, qui petit. *dicta l. quoniam liberi. C. de teſtibus.* aut Iudex a ſe [illegible] hoc deſiderat & ſumptus Iudex f[illegible] vſque ad exitum cauſæ. Alias permiſſum eſſet officiariis inferioribus, nouis & inuſitatis oneribus ſubditos per inductionem prægrauare, fingendo ſuſpicionem malæ adminiſtrationis, & ob id viſitationi locum eſſe, quod [illegible] non debet,
16 imo [illegible] impo[illegible] noua opera [illegible] tenetur lege Iulia de vi publica. *l. [illegible] ad legem Iuliam de vi publica.* ¶ Imo etiam ſuperior non poteſt [illegible] opera [illegible] ponere niſi quatenus reperitur à iure permiſſum C[illegible] *in con[illegible] in princ. in titul. de cenſibus per textum in cap. cum quis ſint 9. quæſt. 3.* ipſum hoc etiam interdicitur iure diuino. Pſal. [illegible] & [illegible]. Nonne cognoſcent omnes qui operantur iniquitatem, qui deuorant plebem meam ſicut eſcam panis. & profecto ſi Vicarius Taurini viſitationem cupiet Reipublicæ, amore & ſtudio pauperum, nihil eſt quod viſitationem inſolitam quærat, ſatis ſi e mandate vt mittant adminiſtratores libros rationũ in Taurinum locum proximum, vbi ſine diſpendio Reipublicæ & ipſorum adminiſtratorum fieri negocium poterit, petendo autem [illegible] inſolitam non videtur ſuſpicione carere. gl. & Bald. *in l. [illegible] quæ ſub conditione ff. de condit. inſtit. cum ſimilibus.* vt per Decium *in cap. 1. in [illegible] de reſcript.* per Iaſonem *in l. teſtamentum. colum. 1.*
17 *C. de teſtam.* ideo † negociorum geſtor tenetur de caſu fortuito, quando negocia inſolita aggreditur. *l. ſi negocia. ff. de negot. geſt.* de quo per Curtium Iuniorem *in conſ. 19.* ¶ Ex præmiſſis cauſa communitatis Gruglaſchi ſatis videtur comprobata aduerſus deſiderium Vicarii Taurini, & argumenta in contrarium adducta ſublata. Plane ad faciliorem explicationem reſpondeo ad ipſa in ſpecie. Itaque non obſtat primum argumentum quod officiarius loci habetur loco patris, quia fateor, ſed retorqueo fundamentum, quod pater non grauat filios oneribus inſolitis, imo laborat pater vt filius acquirat, non eos vt ſpoliet. *l. nihil. §. ſed [illegible] ff. de bonis liber. l. de emancipatis. C. de legitimis hered.* ideo pa-
18 tre debet theſaurizare filiis † Paulus ad Galat. *cap. 2. & cap. prædicator. 17. quæſt. 1.* & votum parentis eſt quod bona ſua veniant ad liberos. *l. nam & ſi parentibus in princ. ff. de inoffic. teſtam. in l. ſcripta. ff. vnde liber. l. vnica. C. de his qui ante apert. tabul. gl. in l. Paulo Callimacho. § [illegible] ff. de legat. 3.* ſed Vicarius Taurini non quærit paterne tractare homines Gruglaſchi, volendo intereſſe computis ipſorum cum magno eorum diſpendio ſine cauſa, cum poſſit vtilitati Reipublicæ prouidere per ſolam inſpectionem librorum adminiſtrationum in ciuitate Taurini citra acceſſum ad locum Gruglaſchi vbi impendia maxima conſumi oporteat. ¶ Secundo reſpondeo, quod [illegible] paterne vult [illegible] ſubditos Gruglaſchi, quare et id non debet ſumptibus Reipublicæ, ſed ſumptibus [illegible] inſtigantis, a[illegible] aliunde, ne incommodum ſuſtineat Reſpublica [illegible] ad [illegible] adminiſtratorum. Affectus enim paternus in ſubditos [illegible] ne boni opp[illegible] ntur, & mali impuniti [illegible] [illegible] cogeretur, adminiſtrationem [illegible] [illegible] nis, & [illegible] cur inuita com[illegible] accuſare [illegible] [illegible] inuitus, ita inuita cogi [illegible] poteſt, [illegible] alienis expenſis [illegible] et nec dicatur Vic[illegible] Taurini [illegible] [illegible] communitatis [illegible] [illegible] nulli con[illegible] [illegible] aut inquirendi. Præterea, non

datur actio negociorum geſtorum contra eum quo [illegible] factum eſt. *l. ſi pro te. ff. mandati l. [illegible] C. de negot. geſt.* An[illegible] *col. 2. verſ. hinc etiam diſcendit & in conſ. 245 colum. 5. ver. [illegible] tram prælataram* Soci[illegible] *in conſ. 2[illegible] 6 lib. 2.* ¶ Non obſtat [illegible] argumentum *de legat. 1. C. de iure fiſci. lib. 10.* quia ille tex[illegible] prorſus facit, nam loquitur de rationibus fiſci ſeu a[illegible] pertinentibus, quarum redditio comprobari debet per procuratorem Cæſaris, ad cuius cognitionem pertinent iura [illegible] ſed nos loquimur in caſu [illegible] [illegible]nius [illegible] communitatis, [illegible] bonis & iuribus fiſcus ius non habet, ideo ille textus [illegible] in caſu diuerſo habente rationem diuerſam & le[illegible] [illegible] gari non debuit, quia ex ſeparatis non infertur. *l. fin. ff. de cal[illegible] l. Papinianus exuli. ff. de minor. cum ſimilib.* ¶ Non obſtat tertium [illegible] mentum, quia procedit, vel quando Iudex requi[illegible] uideat contra potentiores, vel quando Iudici aliunde c[illegible] ſed hic nulla eſt querela hum[illegible] um oppreſſorum, [illegible] famatio contra adminiſtratores, non tota Reſpublica ſe op[illegible] nit aduerſus tantam nouitatem. ¶ Secundo reſpondeo, quod ſi Vicarius Taurini rationem habet miſerabilium perſo[illegible] non quærat ipſas miſerabiles perſonas expenſis nouis & [illegible]tis prægrauare, accedendo in magiſtratu ad locum Grug[illegible] ſed libros & rationes Taurini viſitet ſine diſpendio R[illegible] [illegible]cæ. nec Guido Papæ in contrarium allegatus aliquid [illegible] nouo grauamine ſubditorum, imo loquitur in domino [illegible]ficiario loci, qui viſionem computorum implere poteſt [illegible] ſine incommodo ſubditorum. ¶ Non obſtat qu[illegible] [illegible] mum argumentum quod Iudex ſupplet ex offi[illegible] [illegible] ſatur vtilitas publica, quia fateor in cauſis & iudiciis [illegible] tur coram notar. vel quando præcedunt indicia aut [illegible] tiones contra aliquos, per ſupradicta. ¶ Secundo re[illegible] quod ſub prætextu vtilitatis publicæ non debet Iudex oneribus ſubditos prægrauare, viſitationes inſolitas [illegible] ſumptibus alienis, ſed fieri debet aut ſumptibus delinq[illegible] tium, aut inſtigantium, aut alias ipſorum officialium [illegible] quærentium, quando vniuerſitas ipſa aut particulares eius nihil conqueruntur per ſupradicta. ¶ Ex quibus [illegible] ſitationi requiſitæ locum non eſſe ad modum deſider[illegible] tum, niſi vt ſupra dictum eſt ad minus diſpendium Reipublicæ G[illegible] [illegible], ſaluo ſemper ſaniori iudicio, & ita fuit obtentum [illegible] illuſtri Senatu ducali Cancellario Hieronymo Agacia. T[illegible] ni, die 21. Ianuarii. 1535.

SVMMARIA.

1. *Verbum omittere, quando ſit priuatiuum.*
2. *De verbo carere, vnde quid dicatur ibid.*
3. *A verbis contractus non eſt recedendum.*
4. *Quoties verba ſunt clara, non diſputatur.*
5. *Priuilegium per[illegible] contra commiſſum dicitur ſindendum.*
6. *Iudicandum non dicitur, quod non affert tantam vtilitatem in parte, reſpectu partis, quantam in toto, reſpectu totius.*

CONSILIVM CCXXXIX.

Pro communitate Auilianæ contra nobilem Bernardum Ghislandi.

DIVINO ſubſidio ex corde poſtulato. Ex verbis ſtatuti Auilianæ non puto licere no. Bernardo Ghiſlandi co[illegible] cere vinum alibi emptum à nobilibus de Abdua in territo[illegible] Auilianæ. Nam ſtatutum deſiderat duo copulatiue & con[illegible] ctum, vt vinum conduci poſſit in territorium Auilianæ. Primo quod vinum ſit natum in prædiis propriis burgenſium vel colarum Auilianæ. Secundo, quod ipſa prædia ſint bo[illegible] gen[illegible] ſia, itaque vtrunque oportet concurrere. *l. ſi heredi plures. de condi. inſtit. l. ſi quis ita ſtipulatus fuerit decem. ff. de verb. oblig. in l. bon. ſun qui ducenta. §. vtram. ff. de rebus aub. & in cap. 2. de [illegible]* iſtud prædium alias erat extraneum factum ſeruet [illegible] tione nota de Abdua receptorum ad burgenſia Au[illegible] deſierunt eſſe burgenſes [illegible] ſtatuta Auilianæ [illegible] ob[illegible] circa borgenſiam diſponentia, plane mutata [illegible] [illegible] tur priuilegium. *l. Paulus. §. [illegible] ff. de acquir. heredit.* & ibi Bar[illegible] *ſinem* & Aretinus *in 2. notab. l. lucitano. § penult. & ibi ff. de cap. 2. de iure patron. libr. 6.* Socinus *in con[illegible] l. 16 colum. 7. in* [illegible] *bro primo.* Iaſon *in l. quantum in prouerbio col. C. de inoffi. [illegible] l. & ſi contra. colum. penult. [illegible] de vulgar.* nam ſtatim atq[illegible] iſti de Abdua in loco Auilianæ, perdiderunt p[illegible] egiu[illegible]

[illegible] ... communia marito & vxoris. in[illegible]tur quod ſint communia per ſententiam, & ſic commu[illegible]nda, non quod ſtatim domi[illegible] acqui[illegible]tur pro parte alteri[illegible] ¶ Sed [illegible] verbo ſint, contra Anchar. quod [illegible] ipſo iure, [illegible] Bald. & Moder. in l. 1. C. de ſecun[illegible] [illegible] infamis, int[illegible] ipſo iure. ¶ [illegible] Anchar. puto conſiderandum quod [illegible], quia aliud videtur dicere, ſint communia, aliud ſit [illegible], quia verbum ſint communia deſiderat factum hominis [illegible] poſſidere [illegible], & partem in eis habere, ſecus in verbis [illegible], quia non [illegible] aliud factum hominis, & ha[illegible] doct[illegible] Gem. [illegible] impr. in col. 2. de pœnis lib. 6. vbi q[illegible] priuatio in [illegible] ipſo iure, nec requiritur aliqua exec[illegible] hominis, non requiritur aliqua ſententia d[illegible]aratoria, puta, quando ipſo iure ſit quis infamis, & priuatur bona fama, vel quando ſit quis inteſtabilis, vel quando [illegible] actus ipſo iure, ſecus quando priuatio requirit a[illegible] executionem hominis, prout in con[illegible]atione bonorum, nam licet bona ſint conſiſcata ipſo iure, tamen neceſſaria eſt executio in bonis conſiſcatis vt apprehendatur poſſeſſio, adeo [illegible] priuatione requiritur ſententia declaratoria. quam G[illegible] [illegible] ſequuntur Decius & Iaſon in l. ſi quis impum. § [illegible] ff. quod quiſ. pro terra. idem Dec. in cap. 1. col. 4. in fin. de [illegible] [illegible] 327. colum. [illegible] circa med. Iaſ. poſt Bald. Paul. de [illegible] Salic. & Alex. in l. ſi quis [illegible] colum. penult. circa med. C. d[illegible] [illegible] quod circa [illegible] doctrinam Gemini. Dec. & Doctor. [illegible], in qua regula [illegible] conſiderare qu[illegible] declaratione, ſed hic tractare non expedit. Se[illegible]do, qu[illegible] priuil[illegible] burgenſiæ dicatur am[illegible] ipſo iure, ponderato [illegible] ſtatuti, eo caſu habeatur, quæ etiam v[illegible] ſu, idem [illegible] ſignificat ipſo iure, ſicut dicitur de verbis [illegible] ip[illegible], vel ipſo [illegible] cap. vbi maiorper. vbi gloſſ. in verſ. innodetur. de hæret. [illegible] 6. cum ſimil. quæ Cornel. not. in conſ. 105. colum. 4. in princ.

lib. 2. D[illegible] [illegible] verba [illegible] [illegible]ſtatim [illegible] & [illegible] bis [illegible] Bart. & Angel. in l. [illegible] C. [illegible] Bart. [illegible] Ang. in auth. de nupt. [illegible] in auth. de inceſtis nuptiis. in prin. colum. 1. & in §. [illegible] Aub. [illegible] in dicto conſ. 10. in fin. de verbo. [illegible] de [illegible] in conſ. 68. [illegible] bonis. colum. [illegible] C. de bonis [illegible] ſecundum [illegible] 146. colum. [illegible] colum. [illegible] [illegible] ipſum [illegible] conſ. 127. colum. [illegible] Cod. [illegible] [illegible] de, Abb. [illegible] runt qu[illegible] Ant. [illegible] & [illegible] rentur pro[illegible] recepti [illegible] & [illegible] n[illegible] 3
den[illegible] l. adeſſores magiſtratuum. §. pro Aurelio. ff. de adeſſor. [illegible] ſi qu[illegible] [illegible] ampliatum. ff. de verbor. o[illegible]gat. [illegible] tibus reſpiciendum erit ſermo ſtipulationis. l. quicquid aſtringend. ff. eodem titulo. [illegible] inper. §. [illegible] de rer. immutat. cum preci[illegible] C. de probat. & l. non aliter. ff. de legat 3. cum ſimilibus. Et diſputandum non eſt 4
quoties verba [illegible] clara. l. ille aut ille. §. cum in verbis. ff. de leg. 3. continuus. §. cum ita. de verb. obligat. [illegible] ſi ſtatim & ipſo iure priuati uerunt burgenſia, [illegible] burgenſi[illegible] conceſſa contemplatione perſonarum in b[illegible] ſtra[illegible]rum, qui no[illegible] conced burge[illegible]s, vel ſi qui recepti ſunt burgenſium loco, & iſto caſu non procedit quod dicitur priuilegium conceſſum rei tranſire in omnem poſſeſſorem rei, vt habetur in [illegible] forma. §. quanquam. ff. de cenſib. & l. actionum genera. §. 1. ff. de action. & obligat. not. in l. quia perſonale [illegible] ſolut. matrim. cum ſimil. nam illud procedit, niſi concedatur priuilegium ratione perſonarum vt hic, priuilegium enim quod conceditur contemplatione perſonæ dicitur mere perſonale. l. pater filio. in fin. ff. de ſerui. leg. quem tex. ad hoc citat Iaſ. in conſ. 89. colum. 3. ante med. lib. 3. & quod ſcribit Ioan. de Ana. in conſ. 100. vbi quando nominentur perſonæ, quibus quid conceditur, conceſſio dicitur perſonalis, quod procedit licet côcedatur priuilegium etiam reſpectu bonorum Alex. in conſ. 86. col. 1. lib. 1. ¶ Item cum iſtud priuilegium fuit conceſſum ratione priuilegii perſonalis conceſſi illis de Abdua receptis in burgenſes, ceſſante priuilegio perſonali, ceſſare oportet & priuilegium reale. l. Titia. §. vſuras. & ibi Bartol. ff. de legat. 2. l. ex facto. ff. de vulg. & pupil. Bald. in l. 2. C. de epiſc. & cler. Socin. [illegible] conſ. 150. colum. 9. verſ. 6. confirmatur lib. 1. nam illud priuilegium fuit principaliter conceſſum perſonæ, quia præceſſit nomen proprium perſonæ, cui conceſſio facta eſt, quo caſu cêſetur priuilegium perſonale. cap. quoniam abbas. de offic. deleg. cap. ſi gratioſe. de reſcript. lib. 6. non dico quod eſſet priuilegium perſonale, ita quod ad heredes non tranſiret, quia aliter cautum eſt in conceſſione, ſed dico illud eſſe perſonale quo ad hoc, vt non duret priuilegium in rebus quando ceſſauit in per[illegible]. Eſſet enim p[illegible] ſatis abſurdum quod [illegible] extinctum eſt priuilegiũ quo ad perſonas, illud duraret reſpectu bonorum, quia cum bonis conceſſum [illegible] reſpectu perſonæ, ceſſante perſona aut perſonali priuilegio, ceſſat quod cont[illegible]platione perſonæ conceſſum eſt, quia in correſpectiuis ceſſante vno ceſſat & alterum. [illegible] ex cauſa. ff. de minor. l. fin. ff. de accept. l. Clemens patronus. ff. de hered. inſt. cum ſim. lib. & quod multum in propoſito ſcribit Fedes. de Senis in conſ. 237. Factum eſt tale, Quidam Thomas. col. 2. vbi quando quis offert ſe & ſua monaſterio, ſi non tenet oblatio reſpectu perſonæ, non tenet etiam reſpectu bonorum, quia oblatio bonorum fit reſpectu perſonæ. ¶ Præterea conceſſum fuit vnicum priuilegium tantum, quod diuidi non poteſt vt pro parte duret, pro parte non. ſicut dicitur de ſententia continente vnicum capitulum tantum. gl. in l. 1. C. ſi aduerſ. rem iudic. l. in hoc iudicio ff. fam. erciſc. Roma. in conſ. 410. ad fin. [illegible] in conſ. 454. tertia. colum. 3. verſic. & hanc rationem gl. decis. Neapol. deciſ. 218. & licet res ſint, ſeparabiles à 5

[illegible]

[illegible] Rurſus conſiderandum [illegible], quod vniuerſitas Auilianæ non fuiſſet conſtituta tale pr[illegible] [illegible] cauſa in promiſſione [illegible] per ipſos [illegible] Ab[illegible] [illegible], vnum factum reſpectu alterius, ſecundum B[illegible] [illegible] Corn. in conſ. vlt. lib. 1. [illegible] reſpectiuis, vnum non poteſt [illegible] ſine altero, & ſi vnum [illegible] de muner. [illegible] hered. inſtit. [illegible] priuilegium perſonale [illegible] debet [illegible] ſpectu & contemplatione perſonalis. Itaque [illegible] quo [illegible] principal priuilegio perſonali, corruunt omnia conſecutiue & acceſſorie conceſſa, [illegible] conceſſa non fuiſſent, regulam cum principale. [illegible] de reg. iur. [illegible]. & licet iſtud prædium ſit hominis burgenſis, tamen ipſum non eſt burgenſe, quia inter cidit [illegible] qualit [illegible] ſtatutum permittit [illegible] quando prædium eſt burgenſe, & eſt domini burgenſis vel e [illegible] coloe copulatiue agitur [illegible] do in fauorem communitatis Auilianæ. Taurini, Aymo Crauetta ex Sauiliano, I.V.D.

SVMMARIA.

1. [illegible] publici officialis non creduntur, niſi [illegible] ad [illegible] officium.
2. Officium notarii quale ſit.
3. Quilibet præſumitur diligens in officio ſuo.

CONSILIUM CCXL.

De Appellationibus.

DIVINO ſubſidio [illegible] corde poſtulato. Quando appellans non comparet [illegible] diem audientiæ [illegible] ſuper appe[illegible] [illegible]

[illegible]

[illegible] Alex. [illegible] Corne. in conſ. [illegible] negatiuus [illegible] præſumendum [illegible] officia [illegible] Oldr. in conſ. 198. [illegible] habemus veritatem. [illegible] non præſumatur [illegible] quando præſens [illegible] [illegible] materia [illegible] fundant [illegible] quo non ha[illegible] [illegible]

[illegible] poſſit & ridetur [illegible] quam [illegible] pedi [illegible] Aymo Crauetta [illegible] Sauini [illegible] V. D.

SUMMARIA.

[illegible]

13 [illegible] quando [illegible] habent na[illegible].

14 [illegible] liberta[illegible].

15 [illegible] populo Romano.

16 [illegible] arr.

17 [illegible] Papam pro Papa [illegible] Papa [illegible] habet E[illegible].

18 [illegible] diſponere contra legē [illegible].

19 [illegible] fidem [illegible].

20 [illegible] alio de dolo.

CONSILIVM CCXLI.

Pro communitate Brigæ contra Magnificum Dominum Ioannem Maloperam Ducalem Senatorem.

DIxi [illegible] ex eadē poſtulato. Princeps Illuſtriſ[illegible] oppidum Brigæ Magnifico Domino Ge[illegible] motu proprio, ex cer[illegible] poteſtatis & [illegible] rogationis, vnt [illegible] emptorem in dominium, neq; [illegible] præſtat, ſed Princeps ſupplicauit pe[illegible] alienationem [illegible] prohibitã. P[illegible] ſupremo eius Se[illegible] quidem [illegible]. Vel [illegible] dicendum [illegible] Princ[illegible] eſt dominu dire[illegible] omnium ac omnino [illegible] quilibet eſt modera[illegible] *de vbiſq; pro*[illegible] *lege. § conſ*[illegible] *Di*[illegible]

1 [illegible] vendere, & [illegible] iudicio liberorum. [illegible] turbat [illegible] inter ſuæ [illegible] *§ fin.* [illegible]

2 [illegible] ¶ † S[illegible] Brigæ haberet al qua [illegible] nec [illegible] alienan [illegible] potest etiam ſine cauſa. [illegible] *Anto. de Butrio* [illegible] Alexand. in [illegible] Socin. in conſ. 8[illegible] poſt med[illegible] videtur quod [illegible] poſſit princeps [illegible] gentium [illegible] & ſine cauſa, & [illegible] contrarium dicunt, [illegible] Ang. in [illegible] *& ſi de rei vend.* [illegible] Angel [illegible] ſequitur Iaſon in [illegible] *ſtatim & colum. 13. circa finem in conſil. 136.* [illegible] *Cod. de iure* [illegible] ſtatim [illegible] poteſt, quod princeps facit ex certa ſcientia, ſed

[illegible] videtur [illegible] multum ſpecial [illegible] Principis quod [illegible] dubitandum [illegible] ¶ Sed [illegible] conſil. [illegible]

non [illegible] ita conclud[illegible]

¶ [illegible] me videtur [illegible] ex cauſa neceſſaria, quo caſu [illegible] alienatio, vt not. Ioſſen. & Io[illegible] *dilecti de maior. & obedient.* [illegible] *lum. 4.* Alex. and *in conſil. 25 colum. pen.* [illegible] *ſoluto matrim.* [illegible] *in conſil. 3* [illegible] Iaſon [illegible] *lum. 4.* & ibi Corn. *colum. 9. Dig. de legat. 1.* Iaſon [illegible] Cod. *de pactis.* Decius *in conſil. 68* [illegible] *ad finem* de qua neceſſitate cre[illegible] dendum videtur aſſertioni ipſius principis de facto proprio teſtantis, in quo fundatur intentio ſua. [illegible] *deprobat* A[illegible] *in conſil. 368* [illegible] aſſertio facit præſumptionem [illegible] principe, & transfert onus probandi contra [illegible] Roman. *in conſil. 369. in 9 dub.* Corn. *in con*[illegible] *colum. 5.* [illegible] *maxime cum Pontifex. lib.* ¶ Quinto, poſito non fuiſſe [illegible] dicta alienatio principi, tamen alienando videtur translat[illegible] dominium & ius in emptorem, quia prohibitio alienan[illegible] viuos non impedit translationem, iuxta notata per Bar[illegible] & Doctores *in l. qui abſente. § 1. ff. de acquir. poſſ.* & per Bartol. *in* [illegible] *Cod. de condic. ob cauſ.* & per Doctores in [illegible] ¶ Sexto, [illegible] tur in omnem euentum alienationem tenere [illegible] ipſius principis, qui alienauit, etiam [illegible] reuocare, niſi precium emptori reſtitueret. Alex[illegible] *lib. 5.* Decius *in conſil. 144. colum. 2.* Brun[illegible] *in conſil.* [illegible] *lum. 4.* *in conſil. 4. colum. 1. in conſil. 50. colum. 2. & in conſil. 80 colum.* ¶ Qui[illegible] bus tamen non obſtantibus quæ vere non obſtant, com[illegible] opinionem arbitror de iure veriorem, & pro fundamento [illegible] vniuerſitas Brigæ fundatam habet intentionem ſuam ex [illegible]

6 iuris & communi concluſione quod [illegible] Principi non [illegible] vaſ[illegible] los inuitos in [illegible] transferre. *gloſſ. in l.* [illegible] *Cod. de* [illegible] *ber.* Bald. *in conſil. 324. Quæritur vtrum Papa. colum.* [illegible] 26. *Rex Romanor. colum. 3. poſt medium. & colum. ſeq. eodem lib. 1. & in conſilio 97. Proponitur quod Dominus* [illegible] *libro 3. & in conſilio 410. Quæritur vtrum dominus. colum. 3. lib.* Paul. de Caſtr. *in conſil.* [illegible] *colum. 3. poſt medium.* [illegible] Curtius ſenior *in conſil.* [illegible] *colum.* [illegible] *in decl. capitis dilecti de maioritate & obedientia.* Corn. *in conſil.* [illegible] *lum. 5. libro 4.* Iaſon *in l.* [illegible] *libertus colum. 10.* Dig. [illegible] *in lib.* [illegible] *colum. 2. poſt medium Cod. de pactis. in conſilio* [illegible] *conſil. 127 colum. 2 lib. 4.* Dec. *in cap.* [illegible] *colum. 4. de probat. & in conſilio* 19. *col.* [illegible] *in conſil. 174 col. 4.* late Ripa lib. [illegible] *de reſcript.* [illegible] & not. Doct. ſupra alleg. [illegible]

7 ¶ [illegible] concluſio probatur efficaci ratione: † nam [illegible] & [illegible] pars procedit. [illegible] *ex ea l. ne legē* [illegible] vbi [illegible] addiscit etiam text. *in cap.* [illegible] *in fine.* not. Bald. [illegible] 188. *Dicitur quod opinio colum. 2. poſt medium verſ. & ad dominium pertinet.* vbi quod ad principem pertinet [illegible] non ſolum tibi, [illegible] *dubitas. med. §.* [illegible] *nona poſt med.* Decii N[illegible] & in [illegible] reſpectu rerum, in quibus tenet dominus [illegible] nut. etiam Brun. Aſſent. *in conſil.* [illegible] *colum. 4.* [illegible] ſubditus non poteſt feud[illegible] alienare, neq; ipſum in aliu[illegible] ferre [illegible] præiudicium domini [illegible] eius [illegible] *de reſtit. ſpoliat. cap.* [illegible] Abb. *in cap. cum dilectus de* [illegible]

[illegible]

prohibitam [illegible] 1742 [illegible] in fin. quod † [illegible] debet [illegible] de iure g[illegible] [illegible] pote homine [illegible] & [illegible] ponte [illegible] illuſtriſſimi [illegible] dicæ [illegible] enerunt cum ipſis Principibus [illegible] non [illegible] poſſent [illegible] aliquo [illegible] trans[illegible] in alie[illegible] dominos in [illegible] cipibus, [illegible] pr[illegible] nullum fuit ſolenniter ſub hypoth[illegible] & [illegible] oppreſſi fuerunt, quibus pa[illegible] & [illegible] b[illegible] ipſa communitas Brigæ, quæ fuit vnita vicariatui S[illegible] & comitatui Niceæ de conſenſu ipſorum, propter quam vni[illegible] conuentiones factæ cum hominibus comitatus exter[illegible] [illegible] hominibus Brigæ. §. *illud tamen. in auth. vt nulli. fine quoque* [illegible] *Digeſt. de leg. 1.* Iaſon *in § in perſonam. in l. act. Inſtit. de action.* ¶ Rurſus [illegible] communitas Brigæ ſpecialiter obtinuit priu[illegible] mediante magna pecunia retro Principibus & per mo[illegible] Principem confirm[illegible] [illegible] alienorem, quod † ſane priu[illegible] cum pecunia

10 con[illegible] [illegible] in contractu[illegible] Bald. *in l. quiſ. pacto. C. vnde liber.* Alex. *in conſil.* 101 *colum. 1 lib.* [illegible] Can. [illegible] Iaſon *in l. 1 col. 5. C. de liber.* [illegible] Dec. *in conſil. 192 colum.* [illegible] ¶ Tertio principaliter non poteſt alienari [illegible] Brigæ de iure di[illegible] o. nam in conuention[illegible] pactis de [illegible] ſupra iurauit [illegible] Princeps more Principis in bona fide ſu[illegible] fidei præſtatio † [illegible] iuramenti. pacta enim ſu[illegible] per

11 fidem, vel per Deum aut per ſancta Euangel[illegible] *penultim. de iureiur. & in cap. ad aures. quod met. cauſ.* [illegible] *§. iurare. colum. 1. verſ. adde etiam prædictum. ff. de iureiur. in l. ſi quis maior col.* [illegible] *C. de tranſact.* & *in § item ſi quis. l. 2. colum. 1.* [illegible] † iuramenti [illegible] eſt

12 de iure diuino *cap. & ſi Christus. de iureiur.* dicit [illegible] iuramentum eſſe de iure naturali. Archid. *in c. authoritatem. 15 quæſt. 6.* [illegible] & ſequitur etiam Anchar. *in conſil. 182. Reuerendo ordine. col. 2.* [illegible] *fin.* quod iuramentum æquè obligat Principes atque priuatos, imo ſola promiſſio etiam Deum ipſum ob[illegible] aret, [illegible] B[illegible] *in l. 1 ff. de pact.* not. Can. [illegible] *de probat.* E[illegible] quibus infertur interdictam eſſe alien[illegible] prædictam [illegible] omni, imo, natu[illegible] [illegible] & [illegible], ſed Princeps etiam ſupremu[illegible] non poteſt [illegible] ius competens de iure naturali vel [illegible] ſine [illegible] de plenitudine poteſtatis, quia [illegible] D[illegible] Principibus, n[illegible] [illegible] & [illegible] ſunt de iure gentium quibus Pri[illegible] obli[illegible] ac priuati. Bald. *in cap. 1 de* [illegible] *in l. 2. C. de ſeruit.* [illegible] & Doct. *in l. fin. C. ſi contra* [illegible] [illegible] 17 [illegible]

[illegible]

quirendi oſtenditur illicitus, corruit effectos ſecutus ex i. li. modo tanquam ſublato fundamento, ſed hic ceſſat cauſa publicę vtilitatis, imo iſta alienatio dicitur contra publicam vtilitatem, quia daretur materia ſubditis diſcedendi ad extraneos, vbi viderent ſe redigi & reduci ad eiuſmodi ſubiectionem ne dicam ignominiam, pertinet enim ad dedecus ſubditorū & maximum eorum incommodum vbi à principe transferuntur in priuatū:
14 nam † viuere ſub principe iuſto, ſumma libertas eſt ſecundum Senecam relatum per Ang. *in l. 1. a l fin. ff. de ſeruit. vrban. prædior.* per contrarium, ſumma ſeruitus & onus duriſſimum ſubici nouo domino multo infimo. & ſcribit Bald. *in conſil. 27. Prudentiam conſulat. colum. 3. cir. a fin. libr. 1.* quod non ſine magna indignatione alienantur vaſalli inuiti, qui nouam ſeruitutem aſpernantur, & quod naturaliter ineſt hominibus libertatē ſuam non fieri de-
15 teriorem. Ideo ſcribit Iaſ. *in tract. feud. col. 1. n. 1.* † quod contractus fuit incognitus populo Rom. & ſi Romani ipſum præſciuiſſent, exoſum habuiſſent, quia continet ſeruitutem perſonarū & rerum, & iuriſdictionē tribuit ſingularibus perſonis, quæ non deberet eſſe niſi penes Principem vel Magiſtratum. *l. nō eſt ſingulis. ff. de reg. iur.* Iam ſi ſubditi vident ſe ad eum modum alienatos, nunquam principē ex corde amabūt, principis autem intereſt ſubditos fideles habere à quib. ex animo diligatur, quia vt legitur in teſtamento Xenophontis, ciuitates muniti ſſimas princeps obtinet, quem ſubditi fide & amore perſequuntur, quod ipſum compertum eſt in multis principib. ipſa rerum experientia. Infertur ex præmiſſis quod homines Brigæ cogi nō poſſint vt alii domino fidelitatem iurent. Cyn. *in l. 1. C. de ſenat.* Bald. & Doct. *in l. ... ff. ſolut. matr.* Soc. *in conſ. 39. col. 3.* Iaſ. *in l. ſi non ſortem § libertus. ff. de cond. indeb. & in l. debitorum. col. 2. C. de pact.* Ripa *lib. 2. reſponſorum ... cap. ... col. 3.* faciunt quæ pulchrè ſcribit Bald. *in conſ. 327. col. 1. lib. 1.* Quinimo ex forma & tenore conuentionum cum ipſis principibus initatum, permittitur hominibus Brigæ de facto, & manu armata reſiſtere, ſi per alium in ſubiectionem vo-
16 cantur. † Videmus etiam quod vbi alienatur res prohibita, alienari poteſt is in cuius fauorem prohibitio facta eſt, rem ipſam occupare propria authoritate. *gloſ. in § de cætero. in verb. li ... in 4. lib. vt de cætero com. nat. non fieret.* quam gloſſ. reputat ſingul. Bald. *in ... cæterum. co um. 4. de ... .* eandem gloſſ. dicit ſolennem Iaſ. *in l. filiusfamil. in § Diui. col. 6. verſ. adde etiam pro intellectu & in repet. col. 9. verſ. aduerte diligenter. ff. de legat. 1.* & in terminis noſtris quod etiam ceſſantibus conuentionibus liceat ſubditis ſic alienatis reſiſtere manu armata, voluit Bald. *in conſil. 326. Rex Romanorum. col. 2. a l fin. lib. 1.* vbi quod ex hac cauſa bellum geri poteſt. ¶ Facit quod ſcribit idem Bald. *in conſil. 598. Conſuetudo eſt. colum. 2. poſt med. lib. 2.* vbi ſi dominus non habet vaſallum pro vaſallo, non
17 tenetur vaſallus habere dominum pro domino, ſicut † Epiſcopus non tenetur habere Papam pro Papa, quando Papa non habet Epiſcopum pro Epiſcopo. facit dictum Domicii oratoris, de quo *cap. eſto ſubiectus. 95 diſt.* Cur ego te habeam ut principem ſi tu non habeas me in Senatorem? Ad idem dictum Ezechielis prophetæ *cap. 11. & 14.* & ſint mihi in populum, & ego ſim eis in partem. Ideò Imp. Antonius à præfectis ſalutatus, proceſſit & mutuam eis ſalutem reddidit. *l. 1. iuncta gloſ. C. de ſent. paſ.* & dicit Bald. *in conſil. 413. Iſta quæſtio. libr. 3.* quod vaſallus poteſt facere guerram contra dominum à quo malè tractatur. ¶ Et præmiſſas conuentiones tenetur obſeruare Modernus princeps ſucceſſor eorum cum quibus factæ ſunt *cap. 1.* vbi late Mod. *de prob.* Cyn. Paul. de Caſtr. & Doct. *in l. digna vox. C. de legib.* Bald. *in conſil. 371. Caſus conſilii talis eſt: Dominus Ferrandus. lib. 1. & in conſil. 159. ſuper eo quod quæritur. colum. 2. lib. 3.* Alexan. *in conſil. 16. colum. penult. verſ. quia etiam quando. lib. 5.* late Can. *in c. 1. de probat.* Rom. *in conſil. 52. In quæſtione magnificorum dominorum. in 2. dub. & in conſil. 116. Viſis neceſſariis. circa finem.* quinimo etiam ſucceſſor principis, qui venit ad principatum non per viam ſucceſſionis, ſed electionis, prout eſt Papa & Imperator, tenetur obſeruare geſta prædeceſſoris, quatenus pertinet ad officium & dignitatem ſuam. Bald. Moder. *in l. 1. ff. de conſtit.* Brun. Aſtenſ. *in conſil. 1. colum. 4. poſt med.* & ſi cupit Princeps mandata ſua à ſucceſſoribus obſeruari, conueniens eſt vt ſuorum prædeceſſorum mandatis venerationem præſtet & cuſtodiat *c. ... 25. q. 1.* & non obſeruando, materiam præbet diſſoluendi eius geſta per ſucceſſores *c. inſtitutionis. 25. q. 2.* Alibi dicit text. *in cap. ſi ea 25. q. 2.* ſi ea deſtruerem quæ anteceſſores noſtri ſtatuerunt, non conſtructor, ſed euerſor iuſtè comprobarer. quæ iura ſi videantur generaliter loquuntur, non ſolum quando aliquid conceſſit per viam pacti aut conuentionis, ſed etiam per viam meri priuilegii. Et dicit Bald. *in conſil. 326. Rex Rom. colu. 3. circa med. lib. 1.* quod vbi ſucceſſor principis contrauenit factis anteceſſoris, dicitur contrauenire ſibi ipſi, quia ſemper eſt vnum imperium. ¶ Quarto principaliter, etiamſi eſſemus in terminis meri priuilegii adhuc princeps tollere non poſſet, quia fuit cōceſſum non ſubditis. *in c. ... nouit. de iudic.* vbi Dec. *colum. 7.* & idem Dec. *in cap. quæ in Eccleſiarum. col. 9. & in cap. eccleſ. S. Mariæ. col. 23. de conſtit.* nec vti poteſt princeps plenitudine poteſtatis contra non ſubditum Ant. & ... *in c. ... paſtoralis. de re iudic.* Ant. *in clem. ... Romani. de iureiur.* Soc. *in conſil. 164. colum. 6. verſ. ſic quartus caſus. & in conſil. 266. col. 16. verſ. quartus caſus. lib. 2. in conſ. 27. ... num. 5. ad fin. & in conſil. 110. col. 8. ad fin. lib. 1.* ſed iſtud priuilegium conceſſum hominibus de comitatu Niciæ & vicariatus Soſpitelli, tempore quo ſponte ſe ſubmiſerunt imperio principum Sabaudiæ, & ſic antequam ſubditi eſſent. Imo vti ... poteſt princeps plenitudine poteſtatis contra ſubditum accidentaliter tantum, non naturaliter, puta, ſi agitur cauſa ſpiritualis inter laicos coram iud. ... eccleſiaſtico, nam laicus non dicuntur ſubditi Papæ naturaliter quoad bona temporalia, ſed tantum accidentaliter propter ... cauſam ſpiritualem, vel ſi quis fiat ſubditus ... delicti, vt ex text. *in d. c. ... paſtoralis.* tradit ... *in cap. ... de teſtibus.* Curt. ſen. *in conſil. 10. colum. 7. & in conſil. ...* ¶ ... ſubmiſſio & ſubiectio facta fuit cum quibuſdam pactis & capitulis, ideo ſolum dicuntur ſubditi reſpectu eorum quæ in ... pactis & capitulis continentur, quo ad illa vero cenſentur liberi. Bartol. *in conſil. 59. Communiter ... conſ. ... lib. 1. ... non dubito. in princip. Digeſt. ... Socin. in conſ. 74. ... libro 1.* Anchar. *in conſil. 4. ... Aſta ... Dec. in conſil. 160. colum. 2. verſ. ... & in ſimilibus ... & in cap. nouit. colum. 4. de iudic.* Brun. Aſten. *in conſ. 5...*

¶ Supereſt vt reſpondeamus ad contraria, ex quorum reſponſione prima difficultas clariſſima fiet. Non obſtat primum fundamentum, quod in re ſua quilibet eſt moderator & arbiter, quia fateor in eo quod eſt libere & omnino ſuum alienari, ſed locus Brigæ non dicitur eſſe principis libere & omnino reſpectu alienationis per ſupradicta. ideo alienari non poteſt contra interdicta legum, quia † non poteſt quis de rebus ſuis diſponere 18
contra legis prohibitionem. *lege nemo poteſt. Digeſt. de leg. ...* & ita reſpondet Corn. *in conſ. 321. lib. 4.* ¶ Secundo reſpondeo, quod nō poteſt quis de reb. ſuis diſponere veniendo contra pactum cum alio celebratum. *l. 1. Digeſt. de pact. l. 1. § ſi conuenit. ff. depoſ. l. pa. ... l. 1. C. de iure emphyteu.* nec etiam poteſt quis diſponere de rebus ſuis in præiudicium iuris tertii. Anchar. *in conſil. 45. Optimis rationibus. colum. 1. circa medium.* Areti. *in l. ſi ius in § differentia ff. de acq. ... poſſeſſ.* vbi in definitione dominii, addit ſaluo iure tertii. ¶ Tertio reſpondeo, quod *regul. in re mandata C. mandati.* procedit in diſpoſitione facti, quatenus agitur de facto, ſecus diſpoſitione iuris, quia homo non poteſt diſponere de iure ad arbitrium, diſponendo de re ſua vltra permiſſionem iuris. *d. l. nemo poteſt.* ideo non poteſt quis facere quod incapax ſibi ſuccedat ex teſtamento, aut inteſtato *l. 1. Cod. de her. ... inſtit.* Pau. de Caſtr. *in conſil. 144. Circa primum articulum. colum. 1. ante med. lib. 2.* ¶ Ad ſecundum reſpondeo, quod procedit in mero priuilegio conceſſo ab ipſo principe, & in iure competenti ex mera & ſolo iure ciuili, quod tollere princeps poteſt etiam ſine cauſa de plenitudine poteſtatis, dummodo non ſit cauſatus effectus iuris gentium: ita loquuntur adducta in ſecundo fundamento. & ... *in l. Gallus. § quod ſi tantum. Digeſt. de lib. & poſthum.* Socin. *in d. conſ. 20. col. pen. verſic. 5. caſ. a lib. 3.* ſecus eſt in iure quæſito de iure gentium, pro vt hic ex conuentione inita cum principibus Sabaudiæ quam obſeruare tenentur ipſi principes & eorum ſucceſſores, nec reuocare poſſunt ſine cauſa etiam de plenitudine poteſtatis, per ſupradicta: alias nullus inuenietur qui vellet cum ipſis principibus contrahere, & ſic priuarentur principes commercio hominum & facultate contrahendi per indirectum. Rom. *in conſ. 357. Quæritur nunquid domini A... col. fin.* Iaſ. *in l. 1. colu. 1. ff. de pa. ... in l. ſi ... colum. 6. ff. de con ... & in l. ... circa fin. C. de teſtam.* Dec. *in cap. 1. colum. 3. de conſtit. ... de probat. in conſil. 18. colum. 3. & in conſ. 51. colum. 5.* nec debet pendere ex momentaneis moribus animi principis quod certa & conſtanti natura formatur. † & altius peccat princeps frangendo fi- 19
dem quam inferior. Bald. *in conſ. 134. Quæritur vtrum Papa ad ... libro 1.* Alibi ſcribit idem Bald. *in conſ. 341. Examinanda ſunt col. 1. ad fin. lib. 1.* quod non dicitur bonus vir qui promiſſa non ſeruat, quinimo fidem fallere graue eſt grauibus, grauioribus grauius, grauiſſimis & exemplarioribus viris grauiſſimum, & quod magis expe-

dit

dat vulgò bonum exemplū, quod à viris famoſis naſcitur, quam bonæ rei ſubſtantiæ à viris ignotis, & appellat ſubſtantiam bonæ rei, quod tibi non vis fieri [illegible] ne feceris. ¶ Alibi ſcribit idem Bald. *in conſil. 23. Inter Abbatiſſam. libr. 2.* quod fidem contractus non ſeruare eſt mentiri. *l. dolus. ff. man.* abominabile autem & horribile eſt mendacium & [illegible] in ore principis, & quod congruum eſſet dicere omnes contractus principis eſſe bonæ fidei ſpeciali iure ſuæ dignitatis. ¶ Alibi ſcribit idem Bald. *in conſ. 275. Quod pro regula. colum. fin. lib. 1.* quod ſicut Princeps non eſt dominus elementorum, ita non eſt dominus contractuum, qui inceperunt à [illegible]

20 [illegible]. † Et adeò graue eſt fidē fallere quod contra tal [illegible] competit actio de dolo. *l. 1. C. de dolo.* ¶ Non obſtat dictum Ang. quo[d] mentiuntur qui dicunt non poſſe Principem ius alterius tollere ſine cauſa, quia non vt Angelus locutus eſt, ſed vt homo mendax, nam contra eum eſt communis opin. vt ſuprà late defendimus. ¶ Non obſtat quod [illegible] videatur diſputare de poteſtate Principis, quia illud procedit in his quæ ſunt iuris ciuilis & merè poſitiui, cuius iuri princeps non ſubiicitur, licet ſecundum illud viuere debeat. *l. princeps. C. de legib.* ſecus in his quæ ſunt de iure diuino, naturali & gentium, cuius iuri princeps ſubiicitur per ſupradicta, in quo iure non ſufficit voluntas principis pro ratione. ¶ Non obſtant illæ clauſulæ ex certa ſcientia & de plenitudine poteſtatis, quæ inuicem æquiparantur. Bald. *in l. eam in princ. C. de appell.* Abb. *in c. ad hæc. de reſcript. & in c. cum inter. colum. 1. de except.* refert & ſequitur Decius *in conſil. 198. colum. penult. ad fin. in conſil. 271. colum. 3. ad fin. & in conſil. 341. colum. 2.* quia abundè ſuprà reſponſum fuit, quod non poteſt princeps vti plenitudine poteſtatis in his quæ ſunt quæſita de iure gentium, nec contra eos qui ſunt ſubditi, non ſimpliciter & generaliter, ſed cum qualitate & cum quibuſdam capitulis factis & conuentionibus. Nec princeps ægre ferre debet quod ei non liceat hoc caſu vti plenitudine poteſtatis, quia non debet appetere & velle maiorem poteſtatē ipſo Deo. Imò ne quidem parem, ſed Deus nihil poteſt quod ſit iniuſtum, quia poſſe malum non eſt poſſe [illegible] infirmitas & impotentia ob quam à malo abſtinere non poſſumus, & omnipotentia in Deo, conſideratur etiam circa hoc quod peccare non poteſt, nos autem mortales miſeri qui peccamus, dicimur infirmi & imbecilles. Ideò Dauid Pſal. 6. [illegible] ad Deum confitendo hanc infirmitatem ac impotentiam, dicens: Miſerere mei Domine quoniam infirmus ſum. [illegible] dictum [illegible] Ioannis: & ſine ipſo factum eſt nihil, exponitur pro peccato, [illegible] aliquos, quod ſine Deo factum [illegible]. [illegible] Philoſophi & cenſores, nō aſcribunt [illegible] ſed ipſi in iuſtitiam præ omnibus virtutibus extollunt, quam [illegible] genus dicunt tenere ſub ſe omnes virtutes, [illegible] tenet, magnitudinem & fortitudinem, per contrarium [illegible] iniuſtitia longe abeſſe dicitur à fortitudine & magnitudine. Itaq; poſſe iniuſte agere, non eſt potentia, ſed defectus potentiæ. facit text. *in c. facit homo. 22. q. 2. & in l. neque Proculo. ff. de verb. ſignific.* quod poſſe non dicimur quod honeſte non poſſumus ſeu de iure, & poſſe malum non eſt poteſtas ſed deficientia quædam. ideò conditio turpis non dicitur poteſtatiua, ſed defectiua & vitioſa quæ tenetur: ita pulchrè dicit Bald. *in conſil. 326. Rex Rom. coronatus. colu. 2. circa med. lib. 1.* Ideò ſi Princeps vtatur clauſula de plenitudine poteſtatis ratione iniuſta, non dicitur plenitudo poteſtatis, ſed plenitudo tempeſtatis, vt ait Card. Mediolan. *in clem. paſtoralis. de re iudic.* quem refert & ſequitur Socin. *in conſil. 164. colum. penult. lib. 2. & in conſil. 20. colum. penult. ad fin. lib. 3.* & vltra Socin. not. Fulgoſ. *in conſil. 61. Domina Catharina. colum. penult.* Franciſc. de Cur. *in conſil. 73. colum. 2. in fin.* quos refert Neuizanus *inter conſil. Bruni in conſil. [illegible] colum. 26* ſed vltra Neuizanum allego Bald. *in conſil. 345. Ad euidentiam premittendum eſt quod Imperator. [illegible] lib. 1.* vbi, quod clauſula de plenitudine poteſtatis intelligitur de poteſtate bona & laudabili, non vituperabili [illegible] tyrannica, nam non dicitur Imperator poſſe niſi quod de iure poteſt. & quod [illegible] abuſiuā [illegible], quæ [illegible] principes vtuntur in ſuis reſcriptis, debent in totum eradicari ab aula, [illegible] ſecundum eum. Al[ibi] [illegible] idem Bald. *in c. 1. de feudo March.* quod Princeps auferens [illegible] de poteſtate abſoluta, ſine [culpa], dicitur Tyrannus [illegible] plenitudo poteſtatis non tribuit [illegible] quod iniquum [illegible] quod [illegible] refert & ſequitur C[ur]tius ſenior. *in conſil. 16. colum. [illegible] in fin. in conſil. 35. colum. [illegible] in fin. & [illegible] conſil. 78. in pr[inc]ip.* nam in [illegible] plenitudo poteſtatis etiam P[illegible] [illegible] non exiſtente. *gloſ. 2. in [illegible]. quanto de nouatur. & in capit. non eſt de voto. facit text.*

in cap. innotuit. 23. queſt. 3. [illegible] *in conſil. 253. colum. 8. poſt* [illegible] quando Princeps iniuſte agit [illegible] per terram. Quinimo propter [illegible] de te in gentem, Eccleſ. 10. Daniel. 2. & 1. Nabuchod. [illegible] *cap. fin. de regibus. 25. q. 4. l. fin.* not. Oldr. *in conſil.* [illegible] *in fin.* principibus iniquè agentibus loquitur Propheta Pſal. [illegible] Ceciderunt qui operantur iniquitatem, & Pſalm. 28. Vox Domini confringentis cedros, & Pſal. 45. Inclinata ſunt regna & alibi ſæpiſſime in ſacra ſcriptura, permittit tamen Deus iniuſtas principum propter ſcelera populorum. Ideò Oſeas [illegible] dicit: dabo regem in furore meo, alibi ſcribit Cic. in 1. Offic[iorum], quod multi potentiam leuem atque inopem arbitrantur ſine iniuria, vbi Cicer. inſtar veri Theologi aperiſſime [illegible] non eſſe potentiam vbi iniurioſe agitur [illegible] princeps Pro[illegible] admonet Pſal. 2. & nunc reges intelligite, erudimini qui iudicatis terram, apprehendite diſciplinam, ne quando iraſcatur Dominus, & pereatis de via iuſta, cum exarſerit in breui ira eius. & Pſal. 104. Vt erudiret principes eius ſicut ſemetipſum, & ſenes eius prudentiam doceret. ¶ Ad clauſulam, non obſtantibus reſpondeo eodem modo quo reſponſum eſt circa clauſulam ex certa ſcientia & de plenitudine poteſtatis, nam [illegible] clauſula de plenitudine poteſtatis habet vim clauſulæ, non obſtantibus. Bald. *in l. fin. [illegible] princ. C. ſententiam reſcindi non poſſ. arg. in c. quiſquis. [illegible] de condit.* Aret. *in conſil. 15. colum. penult. [illegible] fin. non obſtat quod ſit clauſula.* Socin. *in d. conſil. 120. colum. 6. lib. 3. & in conſil. 47* [illegible] etiam idem dicit de clauſula ex certa ſcientia, imò clauſula de plenitudine poteſtatis, ſuperat clauſulas motu proprio ex certa ſcientia & non obſtantibus, quia tanquam genus [illegible] continet ſub ſe plenitud. poteſtatis omnes alias clauſ[ulas] C[urtius] ſenior *in conſil. 65. column. 11. poſt med.* vbi dicit ita [illegible] Bald. *in l. eam in princ. C. de ap.* & Panorm. *in c. ad hæc de reſcript.* [illegible] ſi clauſula de plenitudine poteſtatis quæ eſt fortior no[n] [illegible], quanto minus nocebunt aliæ clauſulæ non æquè effica[ces]. ¶ Secundo poſſet reſponderi, quod cum priuilegia & conuentiones hominum [illegible] habent clauſulam derogatiuam ad ſequentes conceſſiones, non ſufficit clauſula, non obſtantibus, etiam ſpecialis, ſed neceſſaria videtur derogatio ſingularis, ſecundum multorum opinionem, quos Dec. refert *in conſil. 165. colum. fin. & in conſil. 63. col. penult. ad fin.* vbi teſtatur hanc eſſe magis communem opin. Iſta tamen reſponſio non videtur tuta, quia opin. communis eſt in contrarium quod ſufficiat derogatio ſpecialis, licet ſingulariter & indiuiduo non fiat mentio de verbis derogatiuis, vt not. Can. *in cap. nonnulli. de reſcript. & in c. 2. de dolo & contum.* Bartol. *in conſil. 22.* vbi dicit ā[illegible] Oldr. *in conſil. 118. Bonæ memoriæ. & in conſil. 342. Attento themate.* Paul. de Caſtr. *in conſil. 3. Quoniam ad dubium. colum. 1. poſt med.* [illegible] *in conſil. 206. In facto præſenti. in conſil. 275. Paſſus iſte dubitabilis* [illegible] *colum.* [illegible] *in conſil. 248. In facto præſenti pono primo* [illegible] *col. 1. lib. 1. in conſil. 125. Dubitatur primò. colum. 2.* [illegible] *& in conſil. 408. Dubitatur an per diſta* [illegible] *2.* Bald. *in conſil. 218.* [illegible] *lib. 4.* Alex. *in conſ.* [illegible] *colum. 2. lib. 4. in conſ. 18* [illegible] *col. 2. penult. & fin. lib.* [illegible] *in conſil. 111. colum. penult. & in conſ.* [illegible] *col. 2. lib. 6.* Suc. *in conſ. 47. col. 6. & col. fin. lib.* [illegible] vbi atteſtatur hanc eſſe communem opin. & idem Socin. *in l. ſi* [illegible] *& tibi.* [illegible] *in fin. verſ. ex quibus patet vera ſolutio. Digeſt. de leg. 1.* hanc etiam opin. dicit eſſe magis communem Coro *in conſil. 185. colum. 2. lib. 1. & in conſil. 67. colum. penult. lib. 4.* Dec. ſibi contrarius *in conſ. 10. col.* [illegible] *conſil. 475. colum. 2. poſt med. verſic. quarto reſpondetur.* Alex. [illegible] *in conſ.* [illegible] Tertio igitur reſpondeo quod vbi agitur de graui præiudicio, non videtur ſufficere clauſula, non obſtantibus, ſpecialis, ſed ſingularis requiratur: & hoc caſu procedat opinio quam Dec. dicit eſſe magis communem: ita Ang. *in conſ. 265. Quidam domina. col. 1. ad fin.* [illegible] Alex. *in conſil. 134. col. 3.* [illegible] *lib. 1. in conſil. 187. colum. penult. verſ. & quod regulariter lib. 5. & in conſ.* [illegible] *colum. 3.* [illegible] *lib.* [illegible]. Dec. *in conſil.* [illegible] *colum. 3.* ſed [illegible] cet agatur de graui præiudicio, [illegible] videtur quod [illegible] derogatiuis, & operatur [illegible] vbi agitur de notabili præiudicio tertij Ioan. And. & Doctor. *in* [illegible] *de conſ. præb. lib.* [illegible] & Dolc. [illegible] Curtius ſenior *in conſil.* [illegible] *colum. 9.* [illegible] ¶ [illegible] quod ex [illegible] princeps [illegible] [illegible] conuentionibus & toties confirmatis, [illegible] non obſtantibus quantumcunque [illegible] *conſil.* [illegible] *per not. in* [illegible] *ex parte* [illegible] Alex. *conſil. 122.* [illegible] *col. 3. lib. 4.* [illegible] *col. 10. in princ. verſic. octauo me mouet.* Socin. *in conſil. 41. col. 3*

ſe[illegible]

reſponſio referri etiam poteſt ad clauſulam ex certa ſcientia, quæ non operatur [illegible] quæ ſunt fa[illegible] de quibus non [illegible] p[illegible] [illegible] formatum fuiſſe. Bald. [illegible] in 2. colum. penult. C[illegible] reſcrip. [illegible] Alexand. in conſil. [illegible] 22. Viſo puncto col. fin. lib. 4. & in conſil. 54. [illegible] hoc etiam caſu non operatur clauſula de plenitu[illegible] poteſtatis. [illegible] in d. conſil. 120. colum. 6. verſic. reſpondetur ca[illegible] Dec. in conſil. [illegible] 8. colum. penult. ad fin. Bruni. Aſten. in conſ. 87. colum [illegible]. ¶ Præterea etiam clauſulæ non operantur quando p[illegible] [illegible] conceditur ſine cauſæ cognitione parte non vo[illegible] [illegible] per [illegible] correctione non facto de omnibus. Bald. inter [illegible] conſil. 23. Scriptor e. cle[illegible] colum. 7. lib. 4. vol[illegible] [illegible] obtentu in ciuitate Ferrariæ [illegible] etiam Socin. in conſil. 144. verſic. ſed ad iſta dicta lib. 1. alleg. gloſſ. & Doctor. in [illegible] Rot. dec. 240 Papa confirmat [illegible] alius Doctor. de quibus per eum ibi. ¶ Idem ſequitur Dec. in conſil. 37. colum. pen. ad fin. in conſil. 728 colum. fin. & in conſil. 644. colum. pen. & in conſil. [illegible] 5. col. 4. Curt. iunior in conſ. 142 colum. 4. in conſ. [illegible] 7. colum. 7. poſt med. & pro[illegible] eſſet abſurdum quod iſtæ clauſolæ ita leuiter operarentur in grauiſſimum alterius præiudicium natura del[illegible] non habita, & vt dicitur, fuerunt appoſitæ ex conſilio domini emptoris, qui vt Doctor eſt non [illegible] curus [illegible] rei ſuæ [illegible] & [illegible] curate conſuluit, tamen ex hoc non arguitur princeps [illegible] ad integrum totius rei veritatem. ¶ Quinto reſpondeo, quod clauſula, non obſtantibus, non derogat diſ[illegible] [illegible] natæ conſenſu partium. capit. cæterum. in fin. de re[illegible] [illegible] in d. colum. § pen. ibi in verbo pacta [illegible] ſepult. Anchar. in conſil. 20. [illegible] puncto. colum. 1. verſ. & per hoc non obſtat. Dec. in conſil. 198. colum. 2. [illegible] med. [illegible] igitur non derogabit diſpoſitioni confirm[illegible] conſenſu ipſius principis & eius anteceſſorum cum q[illegible] [illegible] ſunt, maxime quia vt ſup. dixi, in[illegible] iuramentum ipſius principis, cui non nocet clauſula [illegible], per quam derogatum non cenſetur actui iurato. [illegible] de reſcript. lib. 6. gloſ. in capitulo conſtitutus. de reſcript. vbi Decius colum. 4. gloſ. in capit. cum non doceas. gloſſ. fin. de elect. lib. 6. quam p[illegible] gul. not. Angel. l. 1. § quæ onerandæ. Dig. quare actio non da. not. Gemin. in conſil. 65. colum. fin. Iaſon in l. ſi mulier & tibi §. in legatum in tertio [illegible] lect. 1. Quod tamen intellige vt per Geminianum in conſil. 83. colum. 2. vbi quod hoc procedit quando quis ſeparatim iurauit ſuper contentis in diſpoſitione, puta promitto ſoluere tale quid, & hoc iuro, ſecus quando iuratur ſimpliciter, aliter non ſpecificando particularitates contentas in diſpoſitione, quia tunc remota diſpoſitione cenſetur remotum iuramentũ, quæ tamen intelligentia videtur dura, cum ratio diuerſitatis reddi poſſe non videtur. ¶ Sexto reſpondeo quod clauſula derogatoria non operatur contra pacta & priuilegia hominum Brigæ tam ſæpe confirmata. gloſ. in d. clem. dudum. & in d. cap. cum non doceas. Alex. in conſil. 125. colum. pen. verſ. accedit in conſil. 195. col. pen. lib. 2. in conſil. 121. Viſo puncto colum. 1. lib. 4. & in conſ. 30. lib. 5. ¶ Septimo reſpondeo, quod hic ſunt plura obſtantia, videlicet pacta, iuramenta, confirmationes, priuilegium clauſum in corpore iuris, per quod ſubditi inuiti alienari non poſſunt, & alia priuilegia ipſorum principum: ideo clauſula derogatoria non operatur [illegible] etiam in ſpecie omnibus obſtantib. Bald. in l. 3. colum. pen. [illegible] furtis & in l. 1. C. de ſeruit. Paul. de Caſtr. in leg. humanum. in prim. not. 2. C. de legibus. & in l. fin. C. ſi contra ius vel vtil. publ. Iaſ. in l. fin. colum. [illegible] de conſtit. princ. Dec. in conſil. 602. colu. 5. in ſeptimo dubio. Curt. iun. in conſil. 1. colum. penult. ¶ Ad clauſulam motu proprio poſſunt accommodari omnes reſponſiones datæ ad alias clauſulas, nam ſi princeps de plenitudine poteſtatis non poteſt tollere [illegible] cauſa ius competens de iure gentium, fruſtra tractamus an aliquid agat motu proprio, vel ad poſtulationem partis, quia ſublato antecedenti tolluntur conſequentia. l. ſed & heredi. § præter. Dig. [illegible] procurat. l. ſi homo mortuus. vbi Iaſon Digeſt. de verb. oblig. Bald. in l. conuenticulam. colum. 3. C. de Epiſcop. & cler. & in c. cum ex offic. de præſcript. ¶ Secundo reſpondeo, quod in alienatione facta per principem ipſi domino Georgio de loco Brigæ etiam motu proprio, non cenſetur derogatum iuribus ipſorum hominum, ſed ſolum iuribus concedentis, quia clauſula, motu proprio, non tollit ius alterius, vt not. in capit. ſi motu proprio. de præbend. libr. 6. in capit. 2. de filiis presbyt. eod. lib. & eſſ. in clem. ſi Romanus. in verſicul. validant de rancni. Hoſtien. & Antun. de Butr. in cap. cauſam. el 2. de teſti. Bal. in cap. ad audientiam. de reſcript. Gemin. in conſil. 104. colum. 2. poſt med. Iaſon in l. ſi quis quenquam. in princip. colum. 2. Digeſt. ſi quis cautio. & in auth. quas actiones. colum. 4. verſic. adde in materia. C. de ſacroſanct. eccleſ. [illegible] c. fin. colum. 5. de conſtit. in cap. ſuper eod. col. 1. de offic. deleg. in conſil. 33. colum. fin. & in conſil. 580. colum. 2. poſt med. ¶ Tertio reſpondeo, quod non operatur clauſula motu proprio, quando reuocat princeps à ſe geſta, quia præſumitur circumuentus, adeò quod contrarium probari non poteſt. l. prædia. C. de loca. prædi. ciuil. vel [illegible] alib. [illegible] ſub rubr. de diuer. prædio. vrban. & ruſtic. vbi Bartol. dic[illegible] quod ſi princeps conce[illegible] rem primo vni, non poteſt alt[illegible] concedere [illegible] motu proprio, niſi dicat: non obſtante conceſſione facta [illegible] Bald. in conſil. 327 Prædictum con[illegible] colum. 2 [illegible] lib. 1. per d. l. prædia. Idem not. Alexand. in conſ. [illegible] colum. 2. poſt med. verſic. [illegible] lib. 6. Dec. in l. nemo poteſt muta[illegible] de regul. iuris. in conſ. [illegible] 0. colum. fin. in conſil. 192. circa in. in co[illegible] 80. colum. [illegible] med. in c[illegible] 58[illegible] penult. poſt med. & in conſil. 689 col. fin. ſed hic [illegible] princeps [illegible] id eſt, con[illegible] [illegible] præ[illegible] ceſſorum [illegible] con[illegible] mediante pec[illegible] ¶ Poſtremo ad [illegible] clauſularum reſpondeo [illegible] plures clauſ[illegible] [illegible] conuincitur [illegible] expreſſiſſe [illegible] Bald. [illegible] 43 colum. 2 [illegible] ¶ Ad [illegible] conſuetudine reſpondeo, quod conſuetudo [illegible] debet. l. in bello. § fa. [illegible] ff. de capti. [illegible] contra [illegible] vel vtil. publ. Bartol. in l. omnes populi. circa fin. Digeſt. [illegible] ruſtic. & in [illegible] in l. de quibus. in fin. ff. de legi. Bald. in conſil. 269 Quidam [illegible] colum. [illegible] med. lib. 1 ¶ Secundo reſpondeo, quod ad hoc non ſufficit [illegible] conſuetudinem generalem alienandi [illegible] principatus, ſed eſſet neceſſe probare conſuetudinem ſpec[illegible] & part[illegible] 2. quod eſt princeps in conſuetudine alienandi loca d[illegible] dominio, non obſtantibus quibuſcunq; conuentionibus, confirmationibus, iuramentis & priuilegiis, quia non ſequitur, princeps conſueuit alienare multa loca de eius dominio, ergo homines illorum locorum habeant conuentiones & pacta iurata & confirmata cum ipſo principe. l. non [illegible] C. [illegible] de legi. & in terminis conſuetudinis ita not. d. Baptiſta de S. Blaſio inter conſ. Bertra. in conſ. 66. colum. 2. poſt med. facit quod ſcribit Anch. in conſ. 389. Pro maiori intelligentia. colum. 5. verſic. ad ſecundam rationem. vbi ſi quis velit probare conſuetudinem eſſe quod fœminæ excludantur a maſculis à ſucceſſionibus, debet probari quod fuerint excluſæ tanquam ex cauſa conſuetudinis, quia non ſequitur, fœminæ fuerunt excluſæ à ſucceſſionibus propter maſculos, ergo fuerunt excluſæ ex cauſa conſuetudinis, eum excludi potuerint ob aliam cauſam, puta excluſione teſtamentaria: eodem modo potuit princeps alienaſſe aliqua loca ob aliam cauſam quam conſuetudinis, quia forte ſubditi contradixerunt, vel quia non erat tanta ratio prohibitionis in aliis ſubditis quanta in hominibus Brigæ. ¶ Facit quod ſcribit Alexan. in conſil. 113 lib. 1. in conſil. 108. ad fin. lib. 2. & in conſil. 75. colum. 4. lib. 4. Iaſ. in l. qui in aliena. in prim. colum. [illegible] verſ. tamen etiam tenet. ff. de acqu. hered. vbi ſi quis alleget aliquam cauſam præſtationis longi temporis, vt aliud cogat præſtandum in futurum, debet probari præſtationes factas fuiſſe tanquam ob cauſam allegatam, quia non ſequitur, factæ ſunt præſtationes longo tempore, ergo factæ ſunt ob cauſam allegata. ¶ A[illegible] bit Dec. Neapol. deciſ. 246. quod ſi mulier alleget ſe contraxiſſe propter metum mariti, & probet ſe fuiſſe à marito verberatam, non ſufficit talis probatio, niſi probet quod fuit verberata ob eam cauſam, illius contractus, cum potuerit verberari ob aliam cauſam, quod dictum tamen mihi non placet. ¶ Tertio reſpondeo, quod ad inducendum conſuetudinem alienandi loca inuitis ſubditis, requiritur contradictio, item ex iudicialis ipſorum ſubditorum, & quod non obſtante tali contradictione fuerit deuentum ad alienationẽ, quia potuit fieri alienatio volentibus ſubditis, quo caſu non inducta eſſet conſuetudo alienandi ſubditis inuitis. Ita in ſimili conſuetudine arguit & tradit Cyn. poſt Pet. in l. 2. C. quæ ſit longa conſuet. ſequitur Alex. in conſ. [illegible] col. 2. poſt med. verſ. rurſus eſſet non conſtat. lib. 6. agitur enim hic de conſuetudine negatiua quod ſubditi non poſſint contradicere alienationi ipſorum, ſed talis conſuetudo negatiua induci non poteſt niſi fuerit obſeruatum contra eorum contradictionem. ¶ Ad idem magis in terminis adduco quod ſcrib. Oldr. in conſil. 337. Prædictu. vbi quod conſuetudo diuidendi feudum comitatus inter vaſallus volentes & conſentientes, non hab[illegible] locum aliquibus ex eis contradicentibus, ſequitur Alex. in conſ. 6. lib. 5. eodem modo conſuetudo alienandi ſubditos non contradicentes extendi non debet ad caſum quo ſubditi contradicerent. ¶ Quarto reſpondeo, quod iſta conſuetudo eſt odioſa & contra ius commune, ideo ſtricte debet interpretari & reſtringi ad ea loca, quæ princeps conſueuit alienare. leg. 1. §. ſi quis [illegible] de.

[illegible]

[illegible] proſ [illegible] ſuis dominium tranſlati [illegible] permiſ [illegible]. §. *ſanctiſſimus. in auth. de* [illegible] *glo. in l.* [illegible] *in gloſ. magna ad fin. C. de reb. alien. non alien.* Doc. *in d. §. ſi aut.* [illegible] *col. 3 in 2 limit.* vbi infe- [illegible] ad alienationem [illegible] & paſſiue. Are. *in conſ.* 21 *col.* [illegible] *in conſ.* [illegible] ſæpe Doct. ſed hic vbi a [illegible] principis [illegible] probatio legis, per [illegible] non poſſ [illegible] ſupra oſtendimus. [illegible] alienationis impedit [illegible] noſtro, quia homines B[illegible] ſua po[illegible] ſtatus & li- be[illegible] prohibetus aliena- [illegible] prohibitio [illegible] non vendicat, [illegible] voluit admitte- re, [illegible] agendo, [illegible] vbi alias a- ctio denegat [illegible] *in venditione. cum gl. ff. de a. l. empt.* Bar. *in l.* [illegible] *§ ſi quis poſt de aqua pluu. arcend.* Iaſ. *in l.* 2. *colum.* 51 *C. de reſc. vend.* ¶ A[illegible] primum & vltimum reſpondeo, quod illud procederet reſpectu ſucceſſoris alienantis in feudo prohibito alienari per legem, qui [illegible] reuocare rem alienatam [illegible] alienantis, tenetur ſoluere pretium, ſed hic non agitur [illegible] quia communitas Brigæ non intendit nec intend[illegible] locum Brigæ ad ſe pertinere, ſed tantum excipit & opponit quod [illegible] Briga [illegible] non potuit in præiudicium [illegible] communitatis & iuris quæſiti, tam de iure [illegible] de iure [illegible], quod hi princeps tollere non [illegible] impote, per ſupra not. latiſſime. ideo [illegible] & ratio diuerſa: [illegible] non poteſt de vno ad [illegible] *l. de mut. inter vir. &* [illegible] *fin. ff. de calumnia* [illegible] nam in ſucceſſo [illegible] agitur de iure quærendo [illegible] de iure quæſito quod tolbitur difficilius. *l.* [illegible] *ff. de* [illegible] *l. ſi ſponſus. § ſi maritus* [illegible] *ff. de* [illegible] *inter vir. & vxorem. l. plus. & l. ſerui. Cod. de* [illegible] ¶ [illegible] reſpondeo, quod etiam ſi ageretur de reuocando [illegible] poſt [illegible] in vita alienantis, quando p[illegible] ſi rem alienaſſet ex cauſa voluntaria. aut ſi ex cauſa [illegible] neceſſitati ſuæ aliunde prouidere po- tuiſſet [illegible] per eiuſmodi alienationem. Alex. *in conſ.* 23 *col. fin.* [illegible] *in conſ.* 43 *col.* [illegible] *conſ.* 57. *col.* 2. *lib.* 3. ſed vt ſupra de- [illegible] non poteſt [illegible] cauſa neceſſitatis, cui prin- [illegible] potuiſſet, maxime quia alien[illegible] [illegible] eſt ad principis neceſſitatem. ¶ V[illegible] [illegible] nullam ex defectu poteſtatis, ſed di- co [illegible] nullam ex defectu voluntatis, & conſidero

[illegible] ex formula [illegible] *ff. de* [illegible] pro ſe præſumere [illegible] ex ſcripto & ratio naturalis [illegible] *apud quos contra omnes. ret. inc. l.* 1 *de offic.* [illegible] vbi etiam Iaſ. *in* 4. *not.* ¶ [illegible] certa ſententia [illegible] reſpondeo, quod [illegible] clauſula [illegible] tur, [illegible] voluiſſe principem iuri [illegible] gloſ. [illegible] Dd. *in l.* [illegible] *§ in comparatione* [illegible] *in gloſ. magna* [illegible] *C. od. de* [illegible] Corn. *in con.* [illegible] *col.* 2. *poſt med. lib.* [illegible] Iaſ. *in l.* [illegible] *cauſas. col. fin. C. de tranſa.* [illegible] *in l. properandum. §. ſin autem alterutra. C. de iud.* Decius *in conſ.* 57. *colum.* [illegible] *verſ. præterea etiam ſi ſtatutum.* Alij ſcrib. Socinus *in conſ.* 21 *col.* 4. *ad fin. lib.* 5. quod potius toleratur ſuperfluitas quam in [illegible] ſed quid abſurdius quam illud præſumere, [illegible] principem iuſtitiam tollere & iniuriam ſeu iniuſtitiam facere, vnde iura naſci debent. *l. meminerint C. vnde vi.* nec in dubio præſumitur princeps voluiſſe reuocare [illegible] geſta, imo in dubio [illegible] interpretatio, quod actus reuocatus non cen[illegible] *Sen. in conſ.* 243. *caſus talis, monaſterium, col. fin.* Al[illegible] *in con.* 157. *col.* [illegible] *lib.* 7. Decius *in conſ.* 68 *colum.* [illegible] Denique in dubio videtur pronunciandum in fauorem communitatis Brigæ quæ tractat de libertate [illegible] cuius cauſa eſt pluſquam fauorabilis *reg. libert.* [illegible] *ff. de reg. iur.* & ita de iure reſpondeo in hoc conſilium præſtare ex mandato ipſius Illuſtriſſimi domini per literas ſigillo Cancellariæ ſignatas, in eadem cauſa conſuluit pro communitate Brigæ, Magnificus vir Antonius de la Ripa ex Vigono dominus Fanulatchi & condominus Fænili, Doctor magnæ conſcientiæ & doctrinæ, deinde fuit cauſa publice diſputata coram illuſtri & ſupremo Senatu per [illegible] aduocatos, tandem princeps illuſtriſſimus iuſtitiæ amans & ſtudioſus homines Brigæ eorum libertati reſtituit, præmiſſa alienatione ad irritum reuocata, ad relationem illuſtris & magnifici viri domini Nicolai Balbi præſidis, ingenio acerrimo & ſpiritu ſublimi, à quo ipſi doctoratus noſtri inſignia accepimus die [illegible] Septembr. 1528. in aula Archiepiſcopatus Thaurini. In qua ipſa etiam ciuitate præſens conſilium reddit[illegible] die 14. Mart. 1535 Aymo Crauetta à Sauiliano Iuriſconſultus.

SVMMARIA.

1 *Ceſſio non tenet contra formam ſtatuti, & ceſſante iuramento actus renunciare non potest iure prohibente & annullante.*
2 *Forenſis dicitur perſona odioſa.*
3 *Tantum operatur iuramentum, quantum habet de conſenſu, & non vltra.*
4 *Præteritio reddit teſtamentum nullum licet præteritus de nullitate nihil dicat.*
5 *[illegible] eſt purum [illegible] teſtamento detrahitur legitima.*
6 *R[illegible] ad vnam [illegible] ad aliam [illegible] extendit[illegible].*
7 *Renunc[illegible] etiam non exiſtente aut ſuccedente perſona cuius contemplatione facta eſt.*

Hebraicam. circa fin. [illegible] *tibus locis* habetur, quod iuramentum intelligitur [illegible] intentionem iurantis, nec extenditur ad id de quo verisimile non eſt iuſſ. cogitaſſe, nec ad omnia in expreſſum illud fuiſſet. Alibi ſcribit Feder. de Senis *in conſ. 210.* [illegible] *talis eſt quidam Epiſcopus circa med.* quod iuramentum dicitur [illegible] iuris. & ſtricte interpretatur propter periculum periurii. *per tex. inc. penult. de iureiur. & in c. clerici. de verb. ſignif.* tantum enim operatur iuramentum quantum habet de conſenſu & non vltra *d. cap. quemadmodum & c. ad noſtram. de iureiur.* nec trahitur iuramentum, niſi ad ea ad quæ trahi [illegible] actus ſuper quo interponitur ſiiuratum non eſſet *l. fin. ff. qui ſatiſd. cog. l. fin. ff. ad munic. & l. fin. Cod. de non num. pec.* Alex. *in conſ. 28. col. penult. poſt med. lib. 1.* ¶ Sed tamen aduerte quod illa quietatio mutua facta eſt, quia Fabri ceſſerat iura ſua Franciſco Graſſi, nec enim quitaſſet Fabri dominum Ludouicum Frotam, niſi quia ceſſerat iura ſua Graſſi. vt ipſe Frota ſolueret ipſi Graſſi: proinde retorquere poteſt fundamentũ quod imo intentio iurantis fuit, vt valida eſſet ceſſio facta Graſſi ex quo ſine tali ceſſione non erat Fabri quitaturus ipſum d. Ludouicum Frotam. itaq; cum illa mutua quitatio fuerit correſpectiua ad ipſam ceſſionem, id eſt, facta reſpectu & contemplatione ipſius ceſſionis, dicendum eſt quod ad ipſum actum ceſſionis trahatur iuramentum, quia ſi ceſſio non valet, etiam non valeret illa quitatio facta vno reſpectu ipſius ceſſionis, nam in correſpectiuis vno viciato aut ſublato viciatur & tollitur alterum, cum vnum non fiat ſine altero. *l. etiam. § ex cauſa. ff. de minor. l. fin. ff. de acceptilat. l. Clemens. § 1. ff. de her. inſtit. l. fil.* [illegible] *§. matri & l. alumnæ. §. ſeia. ff. de alim. leg.* Rurſus cauſa finalis illius mutuæ quitationis fuit ceſſio, ergo ceſſante cauſa, ceſſat effectus *l. adigere. § quamuis. ff. de iure patron. c. cum ceſſante. de appell.* itaq; ſi vult dominus Ludouicus quitationem tenere, ergo neceſſario cogitur approbare validitatem ceſſionis. Proinde circa iſtud dubium concludendum potius videtur contra ipſum dominum Ludouicum. Venio igitur ad 2. dubium circa validitatem inſtitutionis factæ de Gulielmo Fabri ſecundo marito ipſius Annæ. Super quo dubio breuiter concludo. inſtitutionem non tenere duobus fundamentis, primo ratione [illegible] præteritionis [illegible] Annæ & Ioannæ neptum teſtatricis ex Antonio filio præmortuo, ſimiliter ex præteritione nepotum [illegible]. *§ aliud quoque. [illegible] in auth. vt cum de appell. cog.* [illegible] *not. in auth. nouiſſima. C. de inoff. teſtam. l.* [illegible] *l. ſi mater in prim. colum. fin. ff. de vulg.* nec dubitatur iſtud procedere ſi liberi præteriti dicant teſtamentum nullum. *per not. in l. filio præterito. ff. de iniuſto teſtam. & in l. poſthum. Cod.* [illegible] *bon. poſſ. ff. contra tab.* quia

4 [illegible] † præteritio reddit teſtamentum nullum licet præteritus de nullitate nihil dicat *l. 3. § ex his. in verſ. ſemper. ff. de inoff. teſtam. Inſtit. de hered. inprincip. ibi. quia inutilo non conſtituit* [illegible] *l. ſi filius qui in poteſtate. ff. de liberis & poſthum.* ita Iaſ. *in conſil. 103. col. penult. libr. 4.* [illegible] *l. ſi a primo.* [illegible] Socin. *in 2. not. ff. de lib. & poſthu.* tradit idem Socin. *in d. l. ſi filius qui in poteſtatem. in 4. not.* Rurſus ceſſat iſta difficultas, quia liberi præteriti expreſſe comparuerunt in iudicio & de nullitate dixerunt. ¶ Eſt verum quod licet teſtamentum ſit nullum ratione præteritionis, tamẽ liberi præteriti virtute clauſulæ codicillaris cenſentur rogati reſtituere hereditatem Guliel. Fabri ſcripto hered. *l. ex ea. § ex his verbis.* vbi Bart. *ff. de teſtamen.* gloſſ. & Doctor. *in l. ex teſtamento. C. de fideicommiſſ.* Bart. *in l. 1. q.* [illegible] *7. 11. & 12. ff. de iure codicill.* Alex. *in conſil. 9. col. penult. lib. 1. in conſ. 12. lib. 2.* & alibi ſæpiſſime Doctor. ¶ Sed tamen de tali reſtitutione detrahitur legitima, non etiam Trebellian. ex quo grauatus [illegible] eſt puta [illegible] con [illegible]. Bart. *in l. Papinian. § meminiſſe in fi. ff. de inoff. teſtam. in conſ.* [illegible] *tamen hic dominus. in fin. in conſ. 12. ſi quis in teſtamento* [illegible] *l. 20.* [illegible] *habet* [illegible] *dominus Iacobus in fin. & conſil. 64. ſuper prædicta. in primo dubio.* Bald. *in l. filium quem habentem. col. 1.* [illegible] *C. l. famil. erciſc. vbi declarat.* & idem Bald. *in conſil. 36. proponitur quod d.* [illegible] *Antonius in fin. in conſ. 431. gloſſ. lib. 3.* Paul. de Caſtr. *in conſ. 29. circa primum quæſitum dicendum eſt teſtamentum prædictum. column. 1.* [illegible] *dubio in conſ. 575. Ne ſub aquatico. col. 2. in fin. & in conſil. 431* [illegible] *facto &* [illegible] *mihi traditur. in 1. dubio. libr.* [illegible] quicquid aliter & latius ad [illegible] idem Paul. de Caſtr. *in conſil. 274. præſuppoſita*

5 *validitate* [illegible] *fin. lib. 2.* & quod ſolum detrahatur legitima quando grauamen eſt puro in, tradit Alexand. *in conſil.* [illegible] *circa fin. lib. 3.* [illegible] *colum. 5. in 2. dubio. libr. 6.* & alibi ſæpiſſime Doctor. ſatis [illegible] eſt quod ante reſtitutionem fideicommiſſi non [illegible] [illegible] dere [illegible], qui agere non poteſt ante reſtitutionem [illegible] tibalem aut realem, ſed ante reſtitutionem ſolum competit actio ex teſtamento contra heredem, vt reſtituat hereditatem. *l. 1. C. comm. de leg. gloſſ. in l. fi. fin. C. ad Trebell.* ¶ Secundo principaliter [illegible] dditur teſtamentum aut inſtitutio ineffica[illegible] [illegible] diſpoſitionem. *l. hac edictali. Cod. de ſecund. nupt.* ideo [illegible] teſtatrix liberi primi matrimonii primo deb[illegible] [illegible] & in [illegible] quis fit æquale [illegible] ſecundo marito, verbi [illegible] Doctor. maxime modo ob id non potuit Gulielmus Fabri ſecundus maritus plus iure [illegible] fran[illegible] [illegible] ſtionem quam ipſe cedere [illegible] *l. traditio. ff. de acquiren. rerum domin. l. nemo plus. ff. de reg. iur.* [illegible] cum relicta ſecundo marito vltra ſummam. *d. l. hac ed.* [illegible] habeantur pro non ſcripti, & deuoluantur ipſo iure ad liberos [illegible] matrimonii, potuit & poteſt dominus Ludouicus [illegible] re reſtitutum ſit excl[illegible] uum iuris agen[illegible] [illegible] Doctor. Bart. *in l.* [illegible] *ff. de* [illegible] *non. rei indiu. pro quo gloſſ. in l. 2. ff.* [illegible] *her.* [illegible] vbi quando ſunt plures heredes, ſi vnus agit in ſol[illegible] eſt opponi de iure aliorum coheredum tradit Paul. [illegible] *in conſil. 454.* [illegible] *& examinato proceſſu. column. 2. verſicul. 2. pri*[illegible] *ter. libr. 2.* [illegible] *in conſil. 7* [illegible] *facti narratione ad finem 7. dubii. libr. 2.* Cal[illegible] *in con.* [illegible] *77* [illegible] *4. circa princ. & in conſil. 92. colum. 3. circa med.* [illegible] tas an dominus Ludouicus poſſit opponere [illegible] primi matrimonii, quia ipſi [illegible] comparue[illegible] in [illegible] & proteſtati ſunt de iuribus ipſorum ¶ Nec obſtat [illegible] Annæ & Ioannæ neptes Annæ teſtatricis renunciauerint [illegible] eorum & bona materna mobilia Michaelis Graſſi, quibus reſpondeo multis modis. Primo, quod illa renunciatio facta [illegible] in fauorem ipſius Michaelis Graſſi, qui emit grangiam [illegible] l. Fabri & Anna eius vxore ad effectum, ne ipſe Graſſi [illegible] moleſtari poſſet in ipſis bonis emptis [illegible] ipſas Ann[illegible] [illegible] grangiam. & ſic renunciatio reſtricta eſt ad ipſam grangiam, quia promiſerunt non moleſtare ipſum Graſſi in dicta grangia [illegible] one iurium competentium ipſis Ioannæ & Annæ. Renunciatio [illegible] tur [illegible] limitata ad vnam cauſam, ad alia non extenditur *l. cum Ia-* 6
uenus. ff. de his quæ in teſtam. delen. nam renunciatio eſt ſtricti iuris *l. emptor. §. Lucius. l. tres fratres. ff. de pactis. l. ſi ex pluribus. ff. de ſolut.* Bartol. *in conſil. 437. quædam puella. colum. 2. circa fin. lib. 1.* Card. [illegible] *in c. cum* [illegible] *in* [illegible] *circa fin. in tit. de præbend.* Socin. *in conſ. 96. in fin. lib. 1.* Decius *in l. poſt pacta liter. colum. 5. verſ. & in illud* [illegible] *de pact. & in conſil.* [illegible] *in fin.* Itaque licet renunciauerint iſtæ ſorores iuri legitimæ & eius ſupplemento, tali tamen renunciatio intelligitur reſpectu grangiæ ob quam fiebat renunciatio, id eſt, vt ratione legitimæ inquietari non poſſet Michael Graſſi in gratia emptarũ de [illegible] conſenſus aut renunciatio ſororum circa vnam perſonam, ad aliam non extenditur. *l. firmus. § ante omnia. ff. de pactis.* [illegible] in renunciatione non reſtringatur ad perſonam cui fit, not. *in l. actione. Codic. de pactis.* Et quod ſcribit Rom. *in l. damni. § ſi is qui vni non ff. de damn. infect.* vbi conſtituto procuratore contra Titium & generaliter ad omnes caſus, intelligitur ad omnes [illegible] licet contra Titium, ſimiliter renunciatio facta ob aliquam cauſam, ad [illegible] lam reſtringitur, quia quælibet diſpoſitio ſiue legalis ſiue hominis ad ſuam cauſam reſtringi debet, vt Angel. pul[illegible] hic not. *in conſ. 346. in prin.* ſed vt dixi, iſta renunciatio facta eſt ob cauſam ſecuritatis emptoris pro bonis ab eo emptis: ergo ad alia bona extendi non debet. *l. ſi domus.* vbi Bartol. *ff. de ſeruit. vrban. præd. not. in l. ſiuem. Cod. de iure delib.* Similiter videmus, quod ſi vxor conſentit marito alienanti aliqua bona obligata pro cauſa dotis, non præiudicat conſenſus in aliis bonis non alienatis *l. iubemus. C. ad Vellean.* Roman. *in conſ. 132. vt retulit. in fin.* Alexand. *in conſ. 4. col. 5. poſt med. libr. 2. in conſ. 118. colum. 3. verſ. & propter. lib. 5.* Iaſ. *in d. l. ſi vnus. § ante omnia colum. 2. ff. de pact.* ¶ Secundo † reſpondeo, quod renunciatio non 7
nocet non exiſtente aut ſuccedente perſona, cuius contemplatione facta eſt. Bald. *in l. pactum quod dotali. in 4. quæſt.* [illegible] Paulus de Caſtr. & Salic. *Cod. de collat.* Ideo ſi pater, cuius filia renunciauit, inſtituat filios & extraneos ſimul, quoad extraneos renunciatio non operatur, quia non facta eſt renũciatio propter extraneos. Angel. *in l. cum. in fin. C. de pactis.* quod Angel. dictum pro notabili refert & ſequitur Aretin. *in l. qui ſuperſtitu. colum. 6. ff. de acquir. hered.* Dec. *in conſil.* [illegible] *1. colum. 1. in conſ. 61. colum. 1. in conſ. 309. column. 3. in conſil. 3*[illegible]*0. colum. penult. in fin. & in conſ. 431. & in d. l. pactum colum. 4. C. de collat.* Addo Bald. *in d. conſ. 437. quædam puella. lib. 1.* Corn. *in conſil. 291. libr. 4.* Itaq; cum renunciatio facta fuerit Michaeli Graſſi & ipſe non ſuccedat Annæ teſtatrici: ergo non obſtat renunciatio ſororibus, nec illa operatur alio inſtituto herede, videlicet ſecundo marito. ¶ Tertio reſpondeo, quod renunciatio nocet quando Ioanna & Anna venirent ad hereditatem auiæ paternæ iure ſanguinis & ſucceſſionis: ſed ipſæ veniunt ex diſpoſitione legis in odium auiæ inſtituentis ſecundum maritum contra pro-

[illegible] legi[illegible] ad [illegible] te[illegible] ve-nanti fororea ad b[illegible] [illegible], & [illegible]. Alex. *in l. ſtipulatio hoc modo concepta* [illegible] *ff. de verb.* [illegible] *lib.* [illegible] *lib. 3.* Decius [illegible] *quod* [illegible]. Calcan. *in conſ.* [illegible] *poſt* [illegible] od requiritur conſenſus [illegible] illius, de cu[illegible] dixi [illegible]. ¶ Contrarium tamen quod val at [illegible] do non conſentiente eo, de [illegible] te agi[illegible] *conſ.* [illegible] *Capel* [illegible] *q. 438.* [illegible] Aut[illegible] opin. Capellæ ſæpe numer[illegible] præcedens opinio videtur tutior & commu[illegible]. ¶ Ex præmiſſis concludo, ipſum dominum Ludouicum non poſſe moleſtari, niſi pro ea parte, quæ relinqui potuit ip[illegible] Guliel. Fabri ſecundo marito per Annam eius vxorem ſaluo ſaniori iudicio Thaurini die 20. Martii 1535 Aymo C[illegible] ex Sauiliano I. V. D.

SVMMARIA.

1 *Bona alienata contra prohibitionem teſtatoris poſſunt vendicari, prohibitio enim impedit translationem dominii.*
2 *Fratres* [illegible] *veniunt ex* [illegible] *teſtatoris.*
3 *Cum a* [illegible] *teſtatoris* [illegible] *finalis*
4 *Voluntas declaratur ex ratione adiecta diſpoſitioni.*
5 *Verba ſtatuti debent intelligi, vt aliquid operentur*
6 *Nepos non debet eſſe melioris conditionis quam filius.*

CONSILIVM CCXLIII.

Pro D. Petro de Bugella in caſu teſtamenti.

Diuino ſub[illegible]dio ex[illegible] poſtulato. Deceſſit D. Petrus de B[illegible]ella [illegible] Ioanne & Bartholomæo fratribus & [illegible] ſuis [illegible] quos heredes inſtituit & eis ſubſtituit, prout in teſtamento [illegible], eiſdem etiam reliquit prælegata, quibus [illegible], deinde prohibuit alienationem bonorum prælegatorum, quæ voluit in agnatione manere. ¶ Rurſus deceſſit Bartholomæus relictis Ioan. Petro ac Vrſonia & Catharina liberis ſuis. Amplius deceſſit Ioannes relicto Gerardo eius filio, deinceps proponitur memoratum Ioan. alienaſſe fere bona prælegata extra familiam. De quibus omnibus dubitatur, primo circa bona alienata, an poſſint vendicari. Deinde an filiæ Bartholomæi excludantur ab hereditate Ioan. Petri earum [illegible] per Gerardum filium Ioannis earum fratris in patruelem [illegible] ſtatuto Bugel[illegible] in quo maſculi præferuntur. ¶ Circa primam
1 difficultatem videtur concludendum bona [illegible] alienata contra prohibitionem teſtatoris poſſe vendicari per Gerardum: nam licet prohibitio reſpiciat ad Bartholomæum & Ioan heredes, tamen extenditur etiam ad Ioann Petrum, filium Barthol. tanquam heredem heredis, quoniam facta eſt ſub nomine appellatiue: Bar. *in l. pluresfam.* [illegible] *ad fin. verſ.* [illegible] *ff. de leg. 1.* Rom. *in conſ. 457 circa propoſitam* [illegible]. Dec. *in reg. qui per ſucceſſionem. ad fin. ff. de reg. iur.* Igitur dominium bonorum alienatorum, non fuit translatum per Io. Petrum in extraneos poſſeſſores, ſed licet Gerardo agnato proximiori ipſa bona reuocare per rei vendicationem, quia prohibitio teſtatoris æquiparatur prohibitioni legis, & impedit translationem dominii, [illegible] *C. communia de leg.* nam voluit [illegible] bona alienata extra familiam applicari coheredib. inter quos [illegible] numerandus eſt ipſe Gerard. tanquam heres heredis. ¶ Et [illegible] prohibuit alienationem fieri per heredes eius [illegible], quo caſu heres heredis non videtur comprehen-[illegible] *l. fin. C. de her. inſt.* [illegible] ex quo [illegible] etiam fuerunt vocati in teſtamento [illegible] appellatio[illegible] [illegible] quia verum eſt eos ſcriptos fuiſſe [illegible] ſecundo [illegible] vt pulchre declarat Cornel [illegible] heredes [illegible] filiorum ſubſtituti [illegible] ¶ Confirmatur iſta concluſio ex [illegible] teſtatoris expreſſa in prohibitione quia [illegible] bona [illegible] alienari [illegible] agnatione [illegible] commodum non [illegible] [illegible] quia eſt [illegible]

ne[illegible] qui per [illegible] *in l. generaliter* [illegible] *C. de* [illegible] *ad fin. lib. 1* [illegible] *lib. 4* [illegible] *qua* [illegible] ſit ge[illegible] & [illegible] *Bald.* [illegible] *l. ſtipulatio hoc modo concepta* [illegible] *column. 2. in conſ.* [illegible] diſpoſitione de dicto, [illegible] ſecundum Bald. in [illegible] *dentes quæ ſine lucro poſſunt* licet multi [illegible] ſecundum Corn. quidem [illegible] Bald. dicit ſæpius [illegible] ſuſtinendum, vt patet *in conſ. 227. ad fin. lib. 1* [illegible] *in conſ. 296 column.* [illegible] do Old. *in conſ.* Poſito vbi quod [illegible] legem etiam in [illegible] extendi deberet [illegible] ipſius legis. Abb. *in conſ. 93 column.* [illegible] *lib. 1* Itaque iſta ratio [illegible] lis & finalis [illegible] alienatione [illegible] [illegible] ſtatutione [illegible] tedis, [illegible] teſtatoris declarata per [illegible] nem: [illegible] adiecta diſpoſi[illegible] 4
in l. [illegible] *oportet. ff. de* [illegible] *patre. §.* [illegible] *ff. de leg.* [illegible] *in conſ.* [illegible] legis voluntatem legantis [illegible] vbi Bartolus *ff. de leg. 3.* ¶ Circa ſecundam difficultatem puto [illegible] ſororibus Io. Petri, conſiderata [illegible] & mentem ſtatuti Bugellæ pen. quod ſo. excluditur ab [illegible] patris, & matris, auiæ, patrui, auunculi, & [illegible] exiſtentibus maſculis ex parte auiæ, patris, & matris, & fratrum: cuius ſtatuti mens fuit, vt bona integra maneant inter maſculos: quam rationem ſtatutorum ipſum expreſſe conſiderat. quæ ratio æque militat in perſona Gerardi atque [illegible] in perſona eius p[illegible] viueret, ergo idem ſtatuendum. *l.* [illegible] *ff. de verb. oblig.* [illegible] verba etiam ipſius [illegible] expreſſe videntur [illegible] ipſum [illegible] dum, quia excludunt [illegible] ab hereditate fratris exiſtente maſculo ex parte ipſius fratris, ſed Gerardus dicitur extare ex parte fratris [illegible] cuius hereditate tractatur, quia erat nepos Ioan. Petri ex ſuo fratre, nam verba ex parte fratrum poſſunt dupliciter intelligi. [illegible] linea fratrum, [illegible] Anch. *in conſ. 150.* [illegible] Socin. *in conſ.* [illegible] *lib. 3. & in conſ.* [illegible] *column. 2 lib. 3.* [illegible] *ad fin.* [illegible] primo intelligi [illegible] qui ſunt ex parte ex qua erat ipſe frater, & hoc [illegible] omnes continentur ſub eadem parte [illegible] capite, nam prouenerunt a Petro de [illegible]. Secundo modo intelligi poſſunt effectiue & materialiter [illegible] qui prouenerunt ab ipſo fratre: & hoc modo Gerardus non poteſt dici de Patre Io. Petri quia non deſcendit. ¶ Plane intelligendo [illegible] verba ex parte fratrum, materialiter & effectiue, verba ſtatuti [illegible] ſuperflua & nullius efficaciæ, nam ex conſtitutione iuris communis [illegible] deſcendentes præferuntur [illegible] *§.* [illegible] *de heredit. ab inteſtat.* [illegible] *Cod. de* [illegible] *& legit.* Igitur poſito per illa verba ex parte fratrum. alias de iure communi deberent intelligi [illegible] deſcendentibus, tamen quia [illegible] ſtatutum nihil operaretur [illegible] ſeu comprehenſio, quia verba [illegible] debent [illegible] aliquid operentur, [illegible] iuris communis, ideo [illegible] argumentum [illegible] ſtatuti, vt aliquid operentur [illegible] ſtatutum non operaretur [illegible] commune [illegible] Roman[illegible] Moden[illegible] [illegible] [illegible] bu[illegible]

[illegible] ſi tunc [illegible] ne [illegible], mari [illegible] quod [illegible] contenus [illegible] ſolum [illegible] quidem [illegible] cludens [illegible] dummo. Nun[illegible] Maſtes reſponſum accep[illegible] conforme iuri antiquo 12. Tab. [illegible] bantur. §. *item vetus* [illegible] *Inſtit. de hered.* [illegible] *ſtit. de leg. agna.* [illegible] *Inſtit. de,enat.* Tertiò [illegible] iustorum in æqu[illegible] te ſunt [illegible] erat [illegible] tum poſſeſſio, in fauorem cognatorum [illegible] tot [illegible] gnati præpoſ[illegible] *l.* 1. §. 1 [illegible] etiam iuris prudentia [illegible] gnati cogn[illegible] *autem.inſt.de leg. agn.ſucc.* Ideo ius tal[illegible] citur res ad primæuum [illegible] dictinum [illegible] dentiæ & prætorium, iniquum vide [illegible] *in conſil.* 389. *Tertium.* Cornel. *in conſil.* [illegible] *lum.* 2. *& in conſil.* 150. *col.* [illegible] & [illegible] quod [illegible] excluditur ab here[illegible] citur odioſum [illegible] notabile, in quo [illegible] ſtatuto exclusiuo fœminarum [illegible] Doc[illegible] cent[illegible] conuenire [illegible] dicatur fauorabile. Alexand. *in conſil.* [illegible] *in conſil.* 144. *colum.* 2 *lib.* 6. *& in conſil.* 161. *colum.* [illegible] *lib.* [illegible] ¶ Suadetur iſta interpretatio, quia per ſtatutum excluduntur fœminæ etiam à ſucceſſione aſcendentium, quamdiu extant maſculi ex parte ipſorum aſcendentium quantumuis remotiori in [illegible] gradu exiſtentes, à fortiori eas excludi oportet ab hereditate fratris, quæ æque debita non probatur *in l. fratru. Cod. de in* [illegible] *& l. cum ratio. ff. de bon. damnat.* Et eſt tale [illegible] quod proximior & cui hereditas magis [illegible] betur, excluditur, remotior, [illegible] here[illegible] ditas [illegible] debita eſt, admi[illegible]tetur *gloſſ. in l.* 1 *in verſ.* [illegible] *ff. ſi quis aliquem teſtar. prohib. facit text. in l.* Publius § *fin. ff. de condit. & demonſtr. & regula legis de acceſſionibus. ff. de diuerſ.* [illegible] *tempor. præſcript.* quod ſi [illegible] multo m[illegible] facit text. *in l. ſi viua matre. verſicul. nam licet. Cod.* [illegible] *matre* vbi dicit tex. quod
6 nepos [illegible] vel nep[illegible] non debet eſſe [illegible] conditionis quam filius vel filia. Ad idem text. *in l.* 1. *Cod. de* [illegible] faciunt quæ Iaſon ſcribit *in l.* [illegible] *colum. penult. poſt med. C. de* [illegible] *& in l. Gallus.* §. *nunc de lege Velleian. colum. penult. ff. de liberis & poſth.* vnde bene faciunt quæ ſcribit Alexand. *in conſil.* 26. *in* 2. *dubio. lib.* 5. *quod eſt repetitum in conſil.* 230. *lib.* 7. vbi deciſiue conſuluit, ſtatutum excludens ſororem, propter fratrem, extendi etiam ad fratrem patruelem ob identitatem vel maioritatem rationis, à fortiori [illegible] idem defenditur in caſu noſtro. vbi non ſimpliciter excluditur ſoror propter fratrem, ſed per exiſtentiā maſculorum ex parte fratr[illegible] ¶ Quod tamen dictum eſt, ſtatutum loquens de fratre vt excludat ſororem, pertinere ad fratrem patruelem vt excludat ſororem p[illegible]elem, quod [illegible] voluit Alex. *in conſil.* 89 *colum.* 4. *in* 1 *dub.* [illegible] *lib.* [illegible] *in conſil.* 5 *colum.* 17. non videtur ſine dubio [illegible] voluit Alex. ſibi contr[illegible] *in l.* 1. *C. de ſucceſſ. e dicto. & in* [illegible] *lib.* 2. contrarium [illegible] voluit Paul. de Caſtr. *in conſil.* 117 [illegible] *lib.* 2. Cu[illegible] *colum.* 4 *circa med.* Soc. *in conſil.* 9 *colum.* 2. *verſic. & in primis reſpondeo lib.* 3. Decius *in conſil.* 46. *in princip. & in conſil.* 411 *colum. fin.* Quæ opin. videtur confirman. quia ſtatuta ſæpius maiorem habent rationem proximiorum maſculorum quam remotiorum, ob id non ſequitur, præfer[illegible] ſtatutum fratrem, ergo etiam fratrem patruelem. Se[illegible] tamen iſta diſputatio non videtur hîc nec[illegible]ſaria, nam licet in ſtatuto excluſiuo fœminarum non fiat interpretatio quod agnatus remotior [illegible] ludat cognatos proximiores. Bald. *in l. quod vero. colum. fin. ff. de legibus.* Alex. *in d. conſil.* 9[illegible] *lib.* 2. Iaſ. *in conſil.* 155 *colum.* 8. [illegible] *med. lib.* 1. tamen nos ſumus extra illam difficultatem, quia verba ſtatuti ſunt clara pertinentia ad omnes maſculos vt cun[illegible] remot[illegible] [illegible] parte aſcendentium ſine tranſ[illegible] ſaltum. [illegible] bus conſequens videtur [illegible] Gerardum eſſe anteferen[illegible]. Laus D[illegible]. Thaurini 28. Martii 1535. Aymo Crauetta à Sauiliano Iuriſconſultus.

S V M M A R I A.

1 [illegible] *per* [illegible].
2 [illegible] *ad probationem dol*[illegible]
3 [illegible] *ad arguendum* [illegible]
4 [illegible] *tenetur* [illegible] *crimine falſi, niſi* [illegible]
5 *In* [illegible] *pro eo quod* [illegible]
6 [illegible] *ad excludendam* [illegible] *præſumptionem de*[illegible]
7 [illegible] *ignorantia* [illegible]
8 [illegible] *quando agitur contra perſonam* [illegible]
9 [illegible] *debemus in fauorem rei.*

CONSILIVM CCXLIV.

Pro Ghiono Becchi[illegible] *Carmagnolęs contra fiſcum Machionalem.*

DIVINA [illegible] In [illegible] [illegible] tum [illegible] conſtare delictum eſſe commiſſum & [illegible] quando [illegible] *patefacta. Cod. vnde vi.* [illegible] *ff. de confeſſ.* Alexan. *in conſil.* 33 [illegible] *cius in conſil.* 41 *colum.* 2. Iaſ. *in l. vnſur* [illegible] *demoretur.* [illegible] nec ſufficeret prob[illegible] delictum [illegible] 1
Panorm. *in c.* 1. & ibi D[illegible] *colum. fin. ff. de offic. deleg. cum ſcim.* [illegible] nihil probatur delictum fuiſſe quo agitur, eſſe [illegible] ſum, cur inquiſitus torqueri debeat [illegible] iudices qui initiat [illegible] [illegible] etenim ad probandum [illegible] tera vt oſtendatur, pe[illegible] ad Michaelem Boſſi [illegible] re dominii vel quaſi [illegible] nec ſufficeret ſimpliciter dicere quod pecuniæ pertinent ad talem S[illegible] *in conſil.* [illegible] *col.* 2 *verſicul.* 2. *principaliter lib.* [illegible] *in* §. *ex maleficiis colum.* 11. *Inſtitut. de actio.* Marſil. *ſingul.* 175 *Statutum in conſil.* 40. *num.* 14. *C. in conſil.* 59. *num.* [illegible] P[illegible] ſtendi[illegible] quod pecuniæ remiſſæ inquiſito ab Augu[illegible] [illegible] ſorore [illegible] ipſius Micha[illegible] probatum [illegible] quod pecuniæ illius Antonii Boſſi quæ fuerant [illegible] miſſæ dictæ Auguſtinæ, & pecuniæ quas remiſit Auguſtina [illegible] eædem ſint pecuniæ, etenim [illegible] diuiſit pecunias Auguſtinæ, ergo pecuniæ quas Auguſtina [illegible] miſit inquiſito, ſunt illæ [illegible] nam potuit [illegible] Antonii Boſſi eſſent vel [illegible] pecuniæ traditæ inquiſito eſſent [illegible] Thomæ [illegible] alterius perſonæ, ideo prob[illegible] de neceſſit[illegible] *l. non hoc Cod. vnde legit.* & in ſpecie quod ſit neceſſaria prob[illegible] 2
identitatis ad probationem delicti [illegible] Abb. *in cap. cum Ioannes. colum. fin. de fid. inſtrumen.* refert & ſequitur Decius *in conſil.* 101. *columna* [illegible] *verſicul. bene facit quod dominus Cardinalis* quinimo vbi alias præſumeretur identitas, tamen vbi ſumus in criminalibus, [illegible] ita [illegible] & [illegible] vult Corn. *in conſil.* 133 *colum.* 2. *& colum. fin. & in conſil.* 27[illegible] *circa med. lib.* 3. ¶ [illegible] dicatur, præſumendum eſt quod Ioann. Thomas & Auguſtina pecunias alie[illegible] impleuerint, quia in dubio quilibet præſumitur bonus *l. merito ff. pro ſocio.* [illegible] ſpondeo quod [illegible] præſumptio [illegible] quando pet[illegible] tur fama alterius, ſeu quando ag[illegible] nam ſolum operatur talis præſumptio [illegible] *l. qui iurasſ.* § *ſi pater ff. de iureiu.* [illegible] Bal. & [illegible] gloſſ. pro not. [illegible] & ſequitur Soc. *in conſil.* [illegible] *lib.* 4 Roman. *in conſil.* 204 *plura ſunt. colum.* [illegible] *verſicul. nec refragatur.* A[illegible] *in conſil.* 415. *Primum dubium eſt tale. colum.* 2. *verſicul. ad hoc adducunt.* Corn. *in conſil.* 61. *colum.* [illegible] *in fin. lib.* 1. De[illegible] *ſuper literis. colum.* 4 *circa med. de reſcript.* [illegible] *ad fin. de offic. deleg.* [illegible] *ad fin.* [illegible] *colum.* 2. *circa med. de electio.* [illegible] *colum. fin. C. vnde legitt.* [illegible] *emancipati. colum.* 3. *ante med.* Cad[illegible] Gozadin. *in conſil.* 66. *colum.* 2. vbi tamen Decius & Goz[illegible] de præmiſſis conſiliis mentionem non faciunt. ¶ Præterea dico
quod vbi ſumus in criminalibus non ſufficit præſum[illegible] 3
arguen[illegible] identitatem niſi [illegible] probetur [illegible] pro[illegible] oſtendemus, nec ſufficit quod iſtæ pecuniæ in ver[illegible] illius Antonii Boſſi, niſi ipſe inquiſitus illud [illegible] tit. Bald. *in cap. a nobis. de except. gloſſ. in l.* [illegible] *ff. de recept.* vbi tex. [illegible]

[illegible] *cap. significaſti. vbi gloſſ. in ver. aud.* [illegible] *in verba fin de* [illegible] *libr. 6* Roman. *in conſ.* 054. *columna 2 verſi.* [illegible] C[illegible] *in conſilio.* 168. *colum.* [illegible] *libr. 2.* ¶ [illegible] ignorant[illegible] quando agitur de vitando damno [illegible] *conſilio* 159 *columna penultima verſicul.* [illegible] *libr.* [illegible] non quando agitur de vitando damno [illegible] maxime [illegible], quia iſte inquiſitus non erat [illegible] vxor Boſſi [illegible] pecunias dictæ Auguſti[illegible] potuiſſet [illegible] ſeruit [illegible], ergo [illegible] erat abſens [illegible] pecunias dim[illegible] ipſi inquiſito per dictam Auguſti[illegible]nata, & filia Antonii Boſſi [illegible] quod eſſet [illegible] *cap. fin. matrimon. accuſſat.* [illegible] *l. Titius. §.* [illegible] *de* [illegible] *quæ* Iaſon [illegible] *in l.* [illegible] *poſſeſ. co-lumna* [illegible] *ad* [illegible] *& ſequentib. de acquirend. hered.* [illegible] *in c. ſin quis pro em-ptore* [illegible] *12. ad fin.* [illegible] Dec. *in cap.* [illegible] *ad fin. de con-ſtit. in cap. super literis. colum. 4.* [illegible] *reſcript. & alt.* [illegible] maxime in[illegible] a, quia per [illegible] illud [illegible] *§. quod fere. ff. de pact. in verſicul.* [illegible] *columna 2. circa med. lib.* [illegible] *in conſilio* [illegible] *libr. 2* [illegible] *text. in* [illegible] *ff.* [illegible] *l. quoties. §. qui dolum ff. de probat.* [illegible] *Titium* [illegible] *§. præfe.* [illegible] *adminiſtr. tutor. l. ſi quis* [illegible] *ff. de* [illegible] *apud Labeonem. §. ſi communem. ff. de* [illegible] *extra de regul. iuri.* Et ideo dicit ibi Abb. qu[illegible] vilus amplecti mulierem, debet intelligi [illegible], per quem intellectum excluditur præſum-[illegible] *in cap. in ſcripturis.* 96 *diſtinct.* quod Abb. dictum [illegible] Alexand. *in dicto conſil.* 127 *columna* 3 *libro quarto.* licet Baldus *in l. ne* [illegible] *natales. Cod. de probat.* dicat quod quando ſcholaris [illegible] puellam, non debet [illegible] quod dicat pa-ter noſter [illegible] delictum enim nunquam includi[illegible] in actu qui [illegible] ſine delicto. Baldus *in l.* [illegible] *oppoſ. in fin. Cod. de* [illegible]

5 & in [illegible] ſemper † præſumitur pro eo quod excuſ[illegible] *preſbyt. columna 7. Cod. de* [illegible] Alibi [illegible] id in Bal[illegible] *l.* [illegible] *de ſeruit. expor.* quod intellectus hominis debet eſſe benignus vt bonum præſumat, non malum. refert Iaſon *in l.* [illegible] *illa columna 5. in fin. verſicul. 3. fallit. ff. de verbor. obligat.* 4 Alibi [illegible] Abb. *in c. cum contingat. in gloſſ. 1. de offi. deleg. & in capit. cum tunc. de te-ſtamen.* quod vbi alias de iure præſumitur pluralitas, illa tamen præſumitur vt eo modo ceſſet præſumptio delicti. quod ma-xime videtur procedere conſiderata qualitate perſonæ ipſius

6 inquiſiti viri bonæ vocis † conditionis & famæ quæ multum agit ad excludendam præſumptionem delicti. Baldus *in l. 2. Cod. de falſ. &* [illegible] *quoties. § ſed & non in corpore. ff. de hered. inſtit.* Idem di-cunt Doctor. *in cap. finem litibus. de dolo & contum. & in l. propter* [illegible] *§ ſin autem alterutra.* vbi Alexand. *Cod. de* [illegible] quod pro-pter qualitatem perſonæ ceſſat præſumptio calumniæ. notat. Iaſon *in auth. iubemus. columna fin. verſicul. 5. facit. Cod. de* [illegible] ¶ Imo quando probatur bona fama inquiſiti per eam cenſetur inqui-ſitio, & indicia, quæ alias erant legitima, non ſufficiunt ad torturam, Ba[illegible] *in l. 1. §. penult. per illum text. ff. de* [illegible] Bald. *in l. fin. colum. fin. Cod. de probat.* quod dictum prosin[illegible] refert & ſequi-tur Iaſon *in l.* [illegible] *in fin. Cod.* [illegible] *de leg.* not. Dec. *in conſ.* [illegible] *columna penult. in fin. in conſ.* [illegible] *9. colum. penult.* [illegible] *in conſ.* [illegible] *penult. poſt med.* ſed vi[illegible] & Dec[illegible] Bal[illegible] 4[illegible] [illegible] *& quaeſt.* [illegible] *colum. 2.* [illegible] *in conſ. 284.* [illegible] *libr.* [illegible] *134. columna fin.* [illegible] inquiſitu[illegible] ide[illegible] pecun[illegible] Boſſio, quia potuerit & p[illegible] non [illegible] de eius iure conclu-dent[illegible] præſumitur quod [illegible] on etiam [illegible] alium [illegible] *ff. de* [illegible] Bartolus *in l. Titium & Maeuium.* §. [illegible] *ff. de adminiſtrat. tut.* quod procedit etiam ſi q[illegible] alterius, gloſſ. & Doctor. [illegible] *bon.* [illegible] *in conſilio 8.* [illegible] mulier præſum[illegible] acqui[illegible] [illegible]

[illegible] ¶ [illegible] *adſin* [illegible] ¶ Ad [illegible] *ff. tertium* [illegible] *46 co-lumna* [illegible] ſebat [illegible] ni[illegible] ius, & [illegible] Romaï [illegible] *Cod. ar-*[illegible] & tamen [illegible] emin[illegible] de [illegible] ¶ Ad [illegible] adduc[illegible] *in conſil. 138* [illegible] *in fin. ver.* [illegible] vbi quod filiu[illegible] quando [illegible], & [illegible] bat bona pa-[illegible], & [illegible] de pecuniis [illegible] bona ad[illegible] ſtrabat, ex quibus ap-[illegible] ſufficere probationem per coniecturas vt quis [illegible] de pecuniis alienis, [illegible] ita præſumendo [illegible] ra. ut ad de[illegible] quæ [illegible] alter [illegible] *4. verſicul. autem non apparet lib.* [illegible] *98. columna 2. libr.* [illegible] C[illegible] volu[illegible] non ſufficere coniecturas præ[illegible] ex eis ad delictum emendo ¶ Amplius [illegible] non eſſet omnino probabilis, adhuc [illegible] excuſaretur [illegible] dolo & delicto furti [illegible] quo excuſat ignoran-tia etiam iniuſta, nam † error iuris dicitur ignorantia iniuſta, quia nemini licet ignorare iura [illegible] *legis. Cod. de legibus,* & tamen error iuris excuſat [illegible] dolo. Bartolus & Angel. *in l.* [illegible] *ſi leg. §. ſiiri. ff. de pet. hered.* Cornel. *in conſilio* [illegible] *libr.* [illegible] not. Mo-dernus *in l. ſi quis id quod de* [illegible] *omn. ind.* [illegible] Amplius etiam in his quæ ſunt de gen[illegible] excuſat ignorantia culpæ, ſcilicet à caſtro [illegible] carnaliter eam cuius ſo[illegible] ſororem [illegible] ignorabat [illegible] ab inceſt. licet non à fornicatione. Feder. d[illegible] *in conſ. 167. Mulier accuſat. alleg. 14 col. 1. in tribus* [illegible] ¶ Imo ex [illegible] ignorantia iniuſta non ſo-lum à d[illegible] ſed etiam [illegible] ne qui damnum pecunia-rum patiatur. Ideo vbi agitur de damno vitando, error iuris exc[illegible] iam maſculos & maiores. *l. error. in fin. & l. regula in princip. ff. de iur. & fa. ignorant.* late Doctor *& leg. iuris ignorantia. Cod. qui admitt.* ſed iſta ignorantia non videtur iniuſta imo iuſta ex his quæ ſupra dixi. Et poſito ſciuiſſet iſte inquiſitus pecunias fuiſſe Antonii Boxii, tamen ex quo illas accepit ab Auguſtina ſorore [illegible] Antonio peſte defuncto aut morti pro-ximo, potuit probabiliter cogitare quod Antonius ea[illegible] ris eas donaſſet ipſi Auguſtinæ, quæ eum in morbo peſti-fero non reliquebat, ex quo Auguſtina ſoror quand[illegible] pecunias remiſit dolore tam Antonii quam ſuo contet[illegible] aliud non ſignificauit, ſed ſimpliciter pecunias fratri co[illegible] ſit cuſtodienda Secun[illegible] [illegible] [illegible] indicia quæ opor[illegible] [illegible] quando [illegible] honeſtam [illegible] [illegible] remotam non tangens [illegible] [illegible] quæritur B[illegible] *fin.* [illegible] Matt[illegible]

[illegible] De [illegible] incon[illegible] col [illegible] poſt [illegible] ndicium [illegible] marum [illegible] petri [illegible] domino [illegible] per [illegible] probat [illegible] tortuam [illegible] Boxii, & in- [illegible] & [illegible] talle tunc [illegible] quantitate [illegible] Antonii Boxii p[illegible] conſummauerit [illegible] tetur numeru pe- [illegible] ¶ Q[illegible] ſinc illo caſu ex [illegible] pecunia [illegible] al [illegible] nu [illegible] tandum eſt in [illegible] exceptionis pecunia- tu [illegible] ſine vitio. & qui obligatus eſt ex con- tractu [illegible] ſuam pecuniam deponere ſeu eius heredibus, quæ obligatio [illegible] a crimine furti. Ita in terminis & notabi- liter [illegible] in conſ. l. 410. in cau. a & quaſt. Antonius col. circa med. verſ. [illegible] conſ. lib. 2. ex cuius dictis clariſſime videtur ſolui præſens [illegible] & maxime ex verbis in fine illius conſilii. Et ne [illegible] quod ſi poſt ſcientiam habitam de re aliena, illam ſciens [illegible] muto dominio, furtum tunc committeretur: ſicut dicitur de contrahente matrimonium prohibitum igno- ranter, quod ſuperueniente ſcientia prohibitionis debet abſti- nere [illegible] qui contra. C. [illegible] inceſt. nupt. c. [illegible] inhibitio de clan. deſponſ. Anch. in conſ. 4 [illegible] ſ. ſimoſſimus col. [illegible] ¶ Poſtremo conſidero in fauo- rem inquiſiti vnum, ex quo [illegible] vltima reddi videtur præſens difficul[illegible] iſta p[illegible] inquiſito numerata dominium ſuit in eum translatum & ipſe tenebatur tantundem reſtituere, iuxta Doct. Bart. in l. ex quo. [illegible] quis vero. vbi late [illegible] col. pen. poſt Alex. ff. ſi cert. pet. ergo non potuit committere furtum rei ſuæ. & ideo Doct. [illegible] verſ. quas vero inferunt, quendam iuuenem male & iniuſte fuiſſe ſuſpenſum, quia non portaſſet pecunias ſibi [illegible] litas à mercatore in numerato ad eum ad quem m[illegible] tor de[illegible] miſerat. tradit Paul. de Caſt. in conſ. 141 [illegible] col. 1. poſt med. in 4. dub. lib. 1. quam opin. ego teneo quia [illegible] pecunia numerata nuncio dicitur, quia tradens tunc nó videtur curare an tradat in genere vel in ſpecie, ex quo nun- cius habet in bonis. quod ipſum tamen adhuc melius [illegible] ſt ex verb[illegible] pecunias appareret quod [illegible] ſpe- cie commiſit. vel quia dictum ſit iſtas pecunias tali infertes, vel numero [illegible] ipſos ad talem referas, vel talem meam pecun[illegible] tali reddes. Secus ſi dictum ſit accipe talem pecuniam vel [illegible] ſolue pro me, nam hic [illegible] de effectu ſolutionis non de qua pecunia. Aut ſaltem fiſcus debe- bat probare quod pecunia fuerat remiſſa inquiſito tanquam ſpe- cies, quia id erat fundamentum ſuæ intenti[illegible] & quia vbi ali- quid aliquo caſu poteſt eſſe delictum, alio caſu non, in dubio præſumitur factum eo [illegible] quo delictum [illegible] iuxta do. Bar. in l. non ſolum. §. ſed vt probari. vbi Alex. & Mod. ff. de ope. no. nun. alias eſt in § ſuendum facit text. in l. iuuenis de ſponſ. & c. [illegible] de verb. ſi- gnif. vbi in dubio ſit interpretatio per quam peccatum euitetur. ¶ Alibi ſcribit Alexan. in conſ. 58 col. 3. lib. 7. quod vbi verba teſtis poſſunt intelligi modo licito, & illicito, debent intelligi modo licito. Ideo ſi teſtis deponit quod Titius dixit ego vlciſcar de ta- li, iſta verba debent intelligi de vindi[illegible] licita & permiſſa. id eſt vlciſcar per viam iuris. Idem tradit Bal. in conſ. 98. Bertrandus de Crot. [illegible] lib. [illegible] vbi [illegible] probetur quem ſe iactaſſe de expellendo

[illegible] poſt [illegible] tum Christi [illegible] an ante aduentum Chriſti [illegible] & conſidero [illegible] dubio in fauore [illegible] ſſe pecunias in [illegible] ex [illegible] to, † quia in [illegible] 9 in criminali. l. [illegible] ſequitur in [illegible] do. Paul. de Caſt. in [illegible] etiam in [illegible] 19. Iunii 15[illegible] A[illegible] V. D.

S V M M A R I A.

1 *Qui ſua manu [illegible] aliquo instrumento præſumitur habuiſſe notitiam [illegible]*
2 *Vbi dubitatur de inte[illegible] diſpoſitionis [illegible] recurritur ad cauſam fina- lem ex [illegible] interpretamur.*
3 *Vbi cauſa appoſita in donatione reſpicit voluntatem ipſius donantis, illa præ- ſumitur finalis ſine qua donatio facta non eſſet.*
4 *Commodum [illegible] ab [illegible]*
5 *In ſocietate [illegible] & redita, commoda & incommoda æqualiter, [illegible]*
6 *Verba aliqua [illegible] vt intelligantur ſecundum naturam actus.*
7 *Iudicium [illegible] generale.*
8 *Propter a[illegible] interpretatio*
9 *Interpretatio contractus [illegible] ne in damno ſit alter contra- hentium.*
10 *Natura [illegible] generalis eſt quod generaliter intelligatur, nec reſtringatur [illegible]*
11 *Dona[illegible] inter virum & vxorem ſine iuramento non valet niſi ſit reciproca [illegible]*
12 *Indul[illegible] qui facere [illegible] prohibitum & impoſſibile [illegible]*
13 *Quod importent [illegible] dedit & tradidit*

CONSILIVM C[illegible]XIV.

In cauſa Dominici Violi contra Petrinam Bergadam.

DIVINO ſubſidio ex corde poſtulato. Stephan[illegible] dam [illegible] ſocietatem pan[illegible] Dominicus Viol[illegible] duraret, contr[illegible] & ſunt debitores ipſi ſo[illegible] Dom[illegible] & Stephan[illegible] nation mercatorum Lugdun. [illegible] Stephani Ber- gadam. deinde memoratus Stephanus Bergad[illegible] recognouit ſe debitorem [illegible] duobus inſtrumentis [illegible] Stephanus Bergadam [illegible] ma eius matre & herede [illegible] ſecundo loco [illegible] relicto Dominico Violo [illegible] bona [illegible] ad eam [illegible] ex cauſ[illegible] donatarius [illegible] à di- ctis mercato[illegible] Senaton & Do[illegible] creditorib. dicti quon- dam Stephani Bergadam, de qu[illegible] creditorum iure dicitur conſtare d[illegible] publicis inſtrumentis [illegible] gnitionum Modo Ioannes [illegible] Petrina [illegible] ab ea [illegible] quod [illegible] ipſarum ſpoliatis, nihil curando de inſtrum[illegible] recognitioni ſupradictæ. Quæritur an Do- minicus V[illegible] teneantur [illegible] herede [illegible] Petrinæ ſeu habente[illegible] ſus dictos mer- catores [illegible] miſſione releuationis [illegible] duorum inſtrumentorum quibus [illegible] creditum mercatorum, & ſic limitata videtur eſſe promiſſio quo [illegible]

[illegible]

Ioanne Dong[illegible] vſq[illegible]

[illegible] ſub quod ex ratione ſeu [illegible]

[illegible] quod volut [illegible] magis [illegible]

[illegible] promiſſionem releuat[illegible]

[illegible] donationem. quæ cauſa [illegible] in donante [illegible] in vbi

3 [illegible] cauſa, appoſita in donatione re[illegible] ipſius donantis, [illegible] ſumitur finalis [illegible]

[illegible]

[illegible] Aldo Paulus de Caſt. in conſ. [illegible]

contra [illegible] qualitatibus. trad[illegible]

dem Paulus de C[illegible] .318. [illegible] conſiderandum eſt colum. poſt med. [illegible]

[illegible]

facto. colum. . poſt med. ib . . . *col. in* . . . A . . . & pul. bre . . . Bald . . . *col. in* . . . quod potius . . . verborum . . . iterum. Item . . . qui erat iura hered . . . tur ſatisfacere creditoribus, alioquin tenetur ad intereſſe . . . ſtud eſt de natura actus *l. 1. C. de her. vel act. vend. l. 1. C. de leg. com.*

7 Hinc . . . videmus quod iudicium pro ſocio dicitur generale . . . in ſe continens. textu à not. *in l. 1. in princ. ff. de edend.* not. Socin. *in conſil. 24. lib. 1.* Ex qualitate etiam rei donatæ & initium ſocietatis declaratur mens ipſarum partium gloſſ. & Bart. *in l. ſemper in ſtipulationibus* vbi Dec. . . . *ff. de reg. iur.* ¶ Ruſus cum veriſimile ſit ita partes . . . , illa veriſimilis ſequenda eſt, quia cenſetur quis voluiſſe quod veriſimile ſit. *l. Titius. §. Lucius. ff. de liber. & poſthum. l. Barbarius* vbi Iaſ. *colum. 5. in fin. ff. de offic. prætor.* . . . *in princ.* . . . *quod veriſimile videtur.* & ibi Bald. *ff. de* . . . *verſic.* . . . vbi Iaſ. *colum. 3. ff. de leg. 1. l. mulier id eſt in princ. ff. ad Trebell. l. fin. C. de poſthum. hered. inſtit. gloſſ. in l. tale pactum §. fin. ff. de pact.* Imo verba generalia reſtringuntur ad id quod veriſimile ſit. *l. ſi ſtatam. §. ſolutum. ff. de pign. act. l. ſi quis ita §. fin. ff. de teſtam. tutel.* quæ duo iura ad hoc citat Alex. *in conſil. 26. colum. 2. verſic.* . . . *l.* . . . 4. vbi inquit quod ille text. *in dict. §. ſolutum* eſt optimus ad hoc, ſi verba generalia reſtringuntur ad veriſimile, quanto magis generaliter & propriè intelligentur ſecundum veriſimile. ¶ Ad hæc facit quod voluntas contrahentium cenſetur eſſe conformis diſpoſitioni iuris communis. Bart. *in l. her. mei. §. cum ita ff. ad Trebell. l. ex duo.* vbi Bald. *ff. de acquiren. her. cum ſimil.* Sed de iure communi . . . cauſa ſocietatis verſatur in æqualitate, vt per omnia æqualitatem procedant. *d.* . . . *ff. pro ſocio. l. ſi pa.* . . . vbi not. . . . nam obtinet ſocietas inſtar fraternitatis. *l. verum in princ. ff. pro* . . . ergo tenetur donatio initium ſocietatis ſimiliter ſtatis, ita præſumendum eſt fuiſſe actum de receptione onerum & ſolutione debitorum, alias enim eſſet neceſſe improprietate verba conuenientia, quia non diceretur conceſſa generaliter ſed tranſlata ad iura ſocietatis, ſed pars tantum, *contra l. non dubium. ff. de leg.* ¶ Similiter videmus an aliquid veniat in legato, vel non, inſpicitur declaratio ſi æqualitate ſeruanda. *l. quæſitum. §. ſed & ipſe Papinian. ff. de fund. inſtruct. cum ſimil.* quæ ſcribit Socin. *in conſ. 9. col. 4. lib. 1.* Dec. *in conſ. 41. colum. 2 in conſ. 43 ad fin. & in conſ.* . . . *circa fin.* alias enim argueretur mala fides donatarii ex inæqualitate pactorum. Hoſt. *in ſum. de vi. . . . cum ſimil.* . . . *per Bart.* . . . Sic è contrario arguitur bona fides ex æqualitate pactorum. Iaſ. *in l. ſi. col. 18 in fin. num. 99. C. de iure emph.* . . . *ff. de* . . . *ff. de reb. cred.* . . . *ſi* . . . ſed credendum non eſt voluiſſe donatarium in fide male verſari *l. merito. ff. pro ſocio.* ob id habenda eſt in dubio interpretatio talis qualis ſit contrahentium conditio. *l. ſed quod. §. fin. ff. de rei vend.* quæ æqualitas ſeruanda eſt etiam in iudiciis. *l. fin. C. de fruct. & litium expen.* . . . *legal.* . . . *lib. 6.* . . . vbi Dec. *in 6. not. de except.* æqualitatis enim & iuſtitiæ ſumus amatores dicit text. *in §.* . . . *in auth. de non elig. ſecund. nub.* ¶ Præterea iſtam fuiſſe voluntatem partium, arguitur, quia agebatur inter vir. & vx. ex quorum affectione voluntas declaratur, quod ſicut donatio fuit plena, eodem modo intelligatur receptio onerum, ne alias videatur maritus dolosè circa vxo-

8 rem egiſſe. *l. inter. §. quæ tutoris ff. de excuſ. tut.* ¶ propter affectionem lata ſit interpretatio. *l. Aurelius. §. Titius teſtamento ff. de li. leg. facit l. Proculo ff. de prob. & l. Neſennius ff. de neg. geſt.* & in terminis . . . affectione erga vxorem eſt text. not. *in l. vxorem ex famil.* §. *de. ff. de leg. 2.* tradit Bald. *in conſil. 159. quidam inſtituto lib. 1.* ¶ Iam quando agitur de interpretatione . . . tis alicuius illa habenda eſt ex bono & æquo *leg. in his ibi gloſ. Bart. & Doct. ff. de cond. & d.* . . . Socin. *in conſ. 37. in fin. lib. 3.* ¶ Eſſet autem iniquitas nimis donatarius in ſolidum degrauaretur ab oneribus contractis ex cauſa ſocietatis, cum iura ſocietatis in ſolidum tranſtulerit. ¶ Declaratur etiam voluntas hominis ex arbitrio & opinione aliorum viuentium, vt præſumatur quis illud voluiſſe, quod aliorum rectitudine & militia viuentes veriſimiliter arbitrarentur fieri de iure. *l. quoniam C. de nat. lib.* Ancharan. *in conſil. 33.* . . . *quæſito col. 2 ante med. & in conſil. 361. De verb. obligationum col. fin.* Io. de Anan. *in conſ. 28. colum.* . . . etiam text. *ind. l. quamuis. pro ſingulari*, ad hoc citat Calc. *in conſil. 106. col. 2. ante med.* ¶ Sed quis intellus & rectus vir non id dicet æquiſſimum eſſe, mulierem & vxorem, quæ iuribus ſocietatis ſe ſpoliat, à marito degrauatam fieri oportere: ¶ Poſtremo niſi ita dicamus, mulier pr . . . dens & cedens iura ſocietatis remane-

9 ret in damno, maritus autem in lucro † ſed interpretatio contracts ita habenda eſt, vt in damno fiat alter contrahentium.

in l. . . . *verſ. nec in poteſtat. ff. de iur.* . . . *col. 3. §. 1.* . . . *l. ſi l.* . . . *§. ſed alias ff. de conſ.* . . . *cum ſimil.* vt per Paul. de Caſtro *in conſ.* . . . Paul. *in fin. 1. conſ. 85.* . . . *& ponderatis omnibus ſupra* . . . *in med.* . . . *in conſ. 31* . . . *& examinato puncto. col. pen. poſt med.* . . . & . . . eſt interpretatio per quam altera pars remaneret in . . . licet verba repugnare videantur. Caldet. *in pulchro* . . . *poſt med. ver.* . . . *quia ſi teneremus in tit. de donat. facit optime* . . . *ff. ad exhib.* vbi quod lex captiosè interpretari non debet . . . per eam fraudare, decipi aut damnificari quis poſſit, not. . . . de Butr. *in conſ. 9 in fin.* Imo ampliùs fugienda eſt interpretatio per quam vnus contrahentium frequenter lucrum non perciperet, damnum autem ſuſtineret. Aret. *in conſ.* . . . *col. verſ. ſed tamen hoc non obſtante.* ¶ Quæ omnia . . . ſimul iuncta ſatis videntur confirmare concluſionem noſtram *l.* . . . *ff. de excuſ. tut. l. inſtr. C. de prob.* gloſſ. & Doct. *in c.* . . . *de prob.* ¶ Tantum ſupereſt vt reſpondeamus ad contraria, ad quæ reſpondeo, quod illa verba conſtantibus inſtrumentis, non cenſentur appoſita limitatiuè ſed demonſtratiuè, vt appareret de debitis contentis in illis inſtrumentis. *l. ſi* . . . *§. Titia ff. de libera. leg.* Bar. *in l. Centurio col.* . . . *verſ. ſed quid dicis ff. de vul.* . . . *& in* . . . *cum pater. §. mon.* . . . *verſ. quæro quid ſi* . . . *ff. de leg. 2.* Rom. *in conſil. 143 col. 3.* Ang. *in l. ſi fideicommiſſum. §. tractatum ff. de iud.* ¶ Secundo reſpondeo, quod . . . verba generalia promiſit releuare à manib. & à debitis mercatorum non debent reſtringi propter illa verba conſtantibus inſtrumentis . . . prolata, quæ non conueniunt generali promiſſioni . . . *leg. regula. §. & licet. ff. de iur. & fact. ignor.* per quem text. . . . arguit Imol. *in l. ſi ita quis §.* . . . *ff. de verb. obl.* Dec. *in conſ.* . . . *col. 3* . . . *in conſ. 35. col. 6. in conſ.* . . . *colum. fin. & in conſ. 99 col. pen. circa med.* quando enim præcedit genus & ſequitur enumeratio ſpecierum, genus non reſtringitur ad ſpecies enumeratas, ſed generaliter intelligitur, & ſpecies cenſentur enumeratæ gratia demonſtrationis, niſi enumeratio ſpecierum fieret per dictiones aliquas limitatiuas aut taxatiuas. *l. legata inutiliter. §. ſi* . . . *ff. de ſupell. leg.* Bart. *in l. quæſitum §. ſi fundum ff. de fund. inſtr.* & Dyn. *in regula generi lib. 6.* dicit quod ſpecies cenſentur ex abundanti *not. in l.* . . . *ſed & ſi quis. §. quæſitum ff. ſi quis cau.* vbi quod ſpecies contentæ ſub ſpecie ad maiorem expreſſionem, & quod ex eis non debet reſtringi diſpoſitio generalis præcedens, quia hoc modo inducta ad vnum effectum operarentur contrarium. Alibi ſcribit Soc. *in conſ. 100. col. 1. lib. 2.* quod natura clauſulæ generalis eſt quod generaliter intelligatur, nec reſtringatur à ſpecificatis, per text. *in l. ſtipulatio-* . . . *ff. de verbob.* ¶ Ruſus nunquam reſtringitur generalis diſpoſitio per ſpecialem, quando ex tali reſtrictione ſeheret contra mentem diſponentis, vt not. Dec. *in conſ. 66* . . . *col. 2 ad fin.* hic autem apparet de mente diſponentis ex verbis geminatis & amplis, quia promiſit donatarius releuare donatricem à manibus & à debitis mercatorum, quæ verba geminata exuſſerantius demonſtrant voluntatem & intentionem donatricis, quod omnino vellet liberari ab illis mercatoribus. reſtringendo autem quod ſolum liberaretur & releuaretur reſpectu contentorum in duobus illis inſtrumentis, expreſſè fieret contra mentem diſponentium, quod eſſe non debet. ¶ Tertio reſpondeo, quod generalia verba generaliter debent intelligi, neq; ſunt reſtringenda ex his verbis conſtantibus inſtrumentis, ceſſante ratione reſtringenda, imo vigente ratione in contrarium vt generaliter intelligantur. Alex. *in conſ. 10 col. pen. circa med. lib. 4.* at hic omnis ratio monet, vt generaliter intelligamus promiſſionem per ſupraſcripta ¶ Quarto reſpondeo generalia verba debere reſtringi, vt conformentur iuri & æquitati, licet non patiatur eorum natura. *gloſſ. in c. paratus. 23. q. 1.* quam pro not. refert & ſequitur Dec. *in c.* . . . *parte 2 colum. 1 de offic. d. leg.* Iaſ. *in l. quam* . . . *col. 1. C de teſtam. milit.* a fortiori generaliter debent intelligi & ſecundum eorum naturam, vt æquitas ſeruetur quæ donatricem fauet. ¶ Quinto reſpondeo quod . . . mus in materia in qua lata habenda eſt interpretatio, vt commodum & onus ex pari procedant: per ſupraſcripta. Ergo illa verba, cõſtantibus inſtrumentis, non debent referri ad generalitatem præcedentem, quia reſtringeretur materia late intelligenda. *c. cum dilecti. ſecundum* . . . *de donat.* Alex. *in col. 4. lib.* . Dec. *in conſ. 92 col. 1* . . . *in l.* . . . *col. 6 ad fin. ff. de conſtit. pecu. & in l. Lelius ſi reperiatur col. ſ. ff. de leg.* ¶ Sexto reſpondeo ſi illa verba conſtantib. inſtrumentis ref . . . ur ad præcedentia reſtrictiuè, reſultaret abſurdum, quia donatio eſſet lata . . . & remuneratio remiſſa, ergo talis relatio habenda non eſt Al. b. *in c. cul.* . . . *ſtra 2. in 6. not. de elect.* Dec. *in c. 2. requiſiti. colum. 5 de appell. & in conſ. 99. colum. 4 in conſil. 333 colum. 2.*

ad

ad [illegible] ¶ [illegible] tex [illegible] pani [illegible] illa cauſa [illegible] ndi. Bar [illegible] *colum. 3. lib. 3* D[illegible] *conſ. 191.* [illegible] ¶ [illegible] dero, quod [illegible] non valet, niſi reciproca & [illegible] ita: imo [illegible] reciprocatio [illegible] viciſſitudo debet eſſe æqua [illegible] inæqua [illegible] non dicitur reciproca, propter [illegible] non valet. Salic. *in l.* 1 *C. de donat. ante nupt.* Socin. *in con-*
12 *ſil.* 21 *colum. 2. lib. 2.* ¶ Deinde conſidero quod in dubio non præſumatur quis facere velle, quod eſt prohibitum & impoſſibile de iure. *l. quam patri ff. de ritu nupt.* Bart. *in l. ſi quis ſub conditione in fin. ff. de condit. inſtit.* Bald. *in l. fin § in computatione C. de iure deliber. facit text. in c. à nobis. de ſentent. excommun.* Alex. *in conſil.* 95. *libr.* 6. Paul. de Caſtr. *in conſil.* 316. *libr.* 1. Iaſ. *in l. filius à patre. § fin. in 2. not. ff. de liberis & poſth.* Sed reſtringendo pronunciationem de releuando ad quantitatem inſtrumenti recognitionis, donatio non eſſet æqualis, imo inæqualis valde, ergo vt fiat reductio ad æqualitatem quatenus fieri poteſt, & vt donatio fiat reciproca, probandum eſt voluiſſe donatarium releuare vxorem donantem etiam vltra illam quantitatem, ſi amplior debeatur quia iura dotalia mihi narratur, erant ampliora, alias oporteret dicere voluiſſe coniuges facere actum prohibitum & ipſis impoſſibilem de iure. ¶ Quinimo poſſunt heredes Petrinæ irritare donationem, ſi heres donatarii noluit ſatiſfacere omnibus creditoribus, quatenus intra donata [illegible] cedunt remune[illegible]tionem per ſupradicta. ¶ Nec dicatur quod donatio fuit confirmata morte, quia aut maritus præmortuus eſt, & reuocatur etiam, ſi iuramento eſſet firmata. Decius *in conſil.* 3[illegible] 2. *colum.* 4. *verſ.* 3. *etiam in fina. iuramento in conſil.* 54. *colum.* 2. *vbi latius explicat. in conſil.* 536 *colum.* 2. *circa med. & in conſil* 659. *ad fin.* licet illud dictum Decii, vbi eſt iuramentum, in præſentia [illegible] non [illegible], quia alias vidi in [illegible] reuocari per dominum [illegible] per Antonium de [illegible] Pro Decio tamen [illegible] *in conſil.* 35[illegible] *Donatio causa mortis lib.* [illegible] licet teſpon[illegible] quod iſtud procedit ſecundum opinione, quod donatio [illegible] virum & vxorem non [illegible] teſtamento, ſed [illegible] commun[illegible] quod videtur [illegible] ad [illegible] tranſiuit [illegible] debet [illegible] *§ pactum ff. de probat.* [illegible] Dec. conſulut, *vt patet in conſil.* [illegible] & ita ſecundum [illegible] meum con[illegible] Dec. [illegible] parlamenti Gratianopolis die 14. Auguſti. 1543. ¶ Aut maritus donatarius ſuperuixit & idem probandum eſt, quia vt morte confirmetur, neceſſaria eſt traditio vera vel ficta. *l. Papinianus. ff. de don. inter vir. & vxor.* Dec. *in conſil.* 202. *colum.* 4. *ante med. in conſil.* 596 *column.* 2. Iaſ. *in l. ſi de morte* [illegible] *colum.* 3. *ff. de verb. oblig.* at hic nulla interuenit traditio ſaltem reſpectu bonorum mobilium aut immobilium ſo-
13 cietati vera vel ficta, ergo, &c. ¶ Neque obſtant verba instrumenti dedit & tradidit, quia non agunt traditionem quando res [illegible] conſ[illegible]ctu non erat, ſed tantum operatur, quod liceat ingredi poſſeſſionem propria authoritate. Bart. *in l. prædia in fin. ff. de acquir. poſſ. & in l.* 5. *C. eod. titul.* Bald. *in rubr. C. de contrah. empt. in* 19. *quæſtion.* [illegible] vt tradit Alex. *in d. l. prædia* [illegible] *& in conſil.* [illegible] *libr* 4. [illegible] *in conſil.* 205 [illegible] *libr.* 2. ¶ [illegible] conſequens eſt dicere [illegible] donat[illegible] heredes donantis [illegible] quantitatem tutium [illegible] [illegible] Aymo Crauetta [illegible] D. ſub [illegible] &c.

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[illegible] *quando agitur de intereſſe,* [illegible]

CONSILIVM CCCVI.

Pro Domino Iacobo Perreto

D[illegible] [illegible] Alexandrin. *in conſil* 157 *col.* [illegible] 6. *& in conſil.* 148. [illegible] *conſil.* 141. *Ex facto. colum.* 4. *circa med.* [illegible] Ripa *in l.* 4 *§ Cato. colum.* [illegible] *ber oblig.* [illegible] eſtatur hanc eſſe [illegible] opinionem dicit communem eſſe [illegible] *med.* nu. Doct. *in l quod te* vbi [illegible] *colum* 8 *verſ.* [illegible] *tatur.* Ad idem adducit Cornelium *in conſil.* 207. *colum* [illegible] dicit quod in ob[illegible]nibus [illegible] mora committitur [illegible] que fieri potuit, & factum [illegible] *ſtipulatio* [illegible] *l. continuus. § cum ita ff. de verb.* [illegible] § [illegible] neat contrarium, tamen op[illegible] & verior, quam opin. contr[illegible] quoties non agitur de pœna [illegible] quod Socin. ſcribit *in conſil.* 3 *col.* [illegible] *libr.* 1 [illegible] contrahitur ex implemento alterius partis, quando agitur de intereſſe, non vbi agitur de pœna, & hanc [illegible] onem circa dictum Bald. *in d. § et hoc* [illegible] poſtea tenet [illegible] *in conſ.* 57. *colum.* 3. *circa med.* ſed in caſu noſtro agitur de intereſſe, & ne reus conuentus damnum ſentiat, itaque [illegible] obl[illegible] dum, ſolum intelligitur conceſſum tempus quo actu poſſet explicari. *d. l. continuus. § cum ita ff. de verb. oblig. l. hoc condi* [illegible] *ff. de cond. & demonſtr. & l. cum quis calendis. § fin ff. de verb. oblig.* late Decius *in reg. in omnibus. ff. de reg. iur.* Et quod notabiliter ſcribit Arch. [illegible] *diligenter. col.* 2. *verſ.* 3 *aduertendum.* vbi ſi aliquis promittit vendere aliquam rem Titio quandocunque Titius ſolueret v[illegible] tet ipſi promiſſori ducatos quinquaginta, non teneb[illegible] dere ſi Titius quam primum potuit non ſoluit vel mutuauit illos ducatos quinquaginta, quæ deciſio videtur mirabilis, cum fuerit promiſſum de vendendo quandocunque ſolueretur ducati quinquaginta, & ſic tempus videbatur relictum arbitrio partis, & ob id dictum Arch. non videtur tutum. Sed iſte actus petendi diuiſionem ſtatim poterat inchoari & breui ſpacio temporis impleri, nec probat[illegible] aliquod impedimentum ex aduerſo, igitur eo non implente potuit conuentus non implere, & aduerſus agentem exceptionem opponere, tu non impleuiſti pro parte tua. *l. cum proponas. & l.* 2. *C. de pact.* maxime quando agitur de contractu innominato, *iuxta not. in l. Iulianus ff. de cond. ob cauſ.* imo etiam in contractibus nominatis datur exceptio, *ut* non impleuiſti ad reſciſſionem contractus. Corn. *in conſ.* 151. *quanquam videatur. ad fin lib.* [illegible] *in conſ.* 19[illegible] *ad fin. lib.* 3 quinimo etiam contractus † nominatus reſcinditur agendo ex capite implementi non ſecuti, quoties illud quod erat implendum, fuit cauſa finalis ipſius contractus. *l. cum te fundum. vbi notat. C. de pact. inter empt. & vend. & not. in l. fin ff. de cond. ob cauſ.* Corn. *in conſ.* 101. *colum* 2 *in conſ.* 151 *colum.* 1. *lib.* 1. [illegible] 102. *col.* 4 *poſt med. lib.* 2. Bald. Nouel. *in tract. de dote in* 6. *part priuil.* Socin. *in conſil* 26 *col. fin lib.* 3. quod procedit etiam in contractu in quo agitur de pluribus rebus ſeparatim, quia non [illegible] tenetur contrahens ſtare contractui, niſi ſibi impleatur integraliter, quando vno precio res omnes emptæ ſunt, nec vnam ſine aliis empturus quis fuiſſet. Imol. *in conſ.* 39 *per text. in l. ſi duos. ff de contr. ab empt.* Sed iſta promiſſio tercentum florenorum [illegible] fuit facta ob aliam cauſam, niſi ob diuiſionem ſecundam [illegible] bono[illegible], ſi videatur inſtrumentum obligationis, ergo [illegible] ommodum [illegible] promi[illegible] Bart. *in l.* [illegible] *§ fin. de don.* pulchre An[illegible] *conſ.* [illegible] [illegible] Corn. *in con*[illegible] De[illegible] *ſil.* 38. *ad fin.* [illegible] cum ita conuentio de diui[illegible]ndo aut [illegible] [illegible] tur certe pecunia ad promiſſi[illegible] centum florenorum [illegible] [illegible] Bald *in l.* [illegible] quod ea[illegible]

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SVMMARIA.

[illegible]

[illegible] quod [illegible] ſuis [illegible], vt fug[illegible] [illegible] pecuniæ [illegible] [illegible] & [illegible] ¶ S[illegible] ſponde[illegible], quod [illegible] pter [illegible] pam, [illegible] ordinata ad ſum. [illegible] *l. verum §. i[illegible]* [illegible] *l. 2. §. fin.* [illegible] *non ſimil.* [illegible] Dec. *in d.* [illegible] *ff. de reiud.* [illegible] *l. 6. C. commu.* [illegible] probatæ [illegible] defecerent [illegible] ſed [illegible] ¶ [illegible] tali [illegible] dicitur [illegible] ta ad caſum, quando [illegible] caſum [illegible] euentu [illegible] *in conſil.* [illegible] *fin.* [illegible] *ita q̃. guerra lib. 4.* R[illegible] ſpo[illegible] [illegible] non poterat [illegible] quia per [illegible] pro [illegible] ¶ Quint[illegible] excitate Taurin[illegible] vrbem Med[illegible] contra, iter pa[illegible] habebatur & pedibus & equis et [illegible] pecuniæ compo[illegible] tione, ob id in culpa dici [illegible] non poteſt, [illegible] quod alii facere con[illegible] *l. ſi* [illegible] *apud Labeon. in. ff. de edil. edict. l. 3. ff. ad Macedon. C. de pign.* [illegible] *pignor §. fin.* vbi B[illegible] *ff. de pignor. act.* Baldus *in d. l.* [illegible] Aret. *in conſil. 51. colum. fin. verſic. prætereà vt in facto.* & [illegible] ¶ Secun-

7 do reſpondeo, quod culpa [illegible] ad caſum, quando principal[illegible] caſum. *l. penult. in fin. ff.* [illegible] *l. fin. §. fi. de his qui* [illegible] *credit.* [illegible] *§. 1. ff.* [illegible] ux[illegible] ad hoc [illegible] Dec. *in c.* [illegible] *colum. penult. poſt medium. de conſtit.* ¶ Sed [illegible] pecuniis ad do[illegible] mandantem & creditorem, non reſpiciebat aliquem caſum, imo pertinebat ad fidem bonam & probit[illegible] mandatar[illegible] ſolutum fieret ¶ Tertio reſpondeo, quod culpa dicitur ordinata ad caſum, quando illa culpa fuit cauſa proxima ipſius caſus, ſecus ſi remota: ita ſentit [illegible] *in conſil. 22. colum.* [illegible] *circa med. verſic.* [illegible] ſed [illegible] non fuit cauſa proxima [illegible] nam cauſa proxima fuit occurſus latronum. ¶ Quarto reſpondeo ad [illegible] culpam, licet ex pluribus [illegible] tamen vbi res dubia eſſet, [illegible] in caſu dubio interpretatio [illegible] vt culpa eſſe [illegible] culpæ nomine quis teneatur *l. exceptione.* vbi Bart. *ff. de* [illegible] gloſſ. & Doctor. *in l. ſi quis ex argentariis. § fin. ff. de edendo.* gloſſ. B[illegible]tol. & Doct. *in leg. ſi creditor.* [illegible] *de pign. act.* Alexand. *in conſil. 83. colum. fin. libr. 7.* Taurini 3. Iulii. M.D.XXXV.

S V M M A R I A.

1 *Factum Iudicis habetur pro facto partis.*

2 *Reus nihil excipiens* [illegible] *renunciare*

3 *Parte non opponente admittitur probatio contra præſumptionem iuris, & de iure.*

4 *Sententia valeret ſi pronunciaretur ſuper petitorio vbi fuit cognitum de poſſeſſorio & petitorio*

5 *Vbi liquida ſunt iura petitoria, non eſt ferenda ſententia ſuper poſſeſſorio.*

CONSILIVM CCXLVIII.

In cauſa Michaelis Dulcis.

DIVINO ſubſidio ex corde poſtulato. Iniuſtitia & nullitas [illegible] ſententiæ videtur oſtendi ſequentibus fundamentis nam Michael Du[illegible] alias egit ad iſta bona contra mulieres appellatas, & ſententiam obtinuit in ſui fauorem. deinde in executionem [illegible] inductus in poſſeſſionem iſtorum bonorum, & de[illegible] manu tentus in poſſeſſorio, conſequenter dominium bonorum fuit in eum translatum Iudi[illegible] authoritate. *§. fin. vbi gl. Inſt. de offic. iud.* Bart. *in l. ex hoc iure col. 1. ff. de iuſt. & iur.* Alex. *in conſil.* [illegible] *colum. 2. libr. 5. & in conſil. 90. col. pen. ad fin. libr. 2.* ¶ Amplius, ſi non eſſet actum ad ipſa bona, ſed actione perſonali contra debitorem, deinde in executionem iudi[illegible] bona fuiſſent actori conſignata, dominium huiuſmodi bonorũ tranſlatum fuiſſet in ipſum agentem. *l. à diuo Pio. §. ſi pignora. ff. de re iudic.*

1 Soc. *in d. conſil. 6*[illegible] *colum. 2. poſt med. lib. 1.* probatur hoc ratione, [illegible] factum Iudicis habetur pro facto partis. *l. ſi ob cauſam.* vbi Bald. *C. de euict. l. 1. C. ſi in cauſ. iud. pign.* Bart. *in l. ſi plus §. noua. ff. de euict.* Alex. *in conſil.* [illegible] *colum. 2. lib. 6.* Iaſ. *in l. iuſta colum. 5. ff. de acquir. poſſ. & in l. à diuo Pio. §.* [illegible] *ſi emptor. in 1. not. ff. de re iudic.* Dec. *in conſil. 35*[illegible] *colum. 1. ad fin.* Id[illegible] eſt in [illegible] arbitratoris. Anch. *in conſil. 207. In quæſtione ſupradicta* [illegible] *ordinem. colum. 1.* Idem [illegible] facto arbitri. Soc. *in conſil. 124. colum. 3. lib.* [illegible] plane ſi pars dediſſet in ſolutum bona aliqua, vtique

[illegible] *inſt.* [illegible] *fin.* eod. [illegible] Modo [illegible] hac[illegible] bonorum, [illegible] tamen [illegible] proprietatis [illegible] *dilectus* [illegible] *Sutrina* [illegible] ¶ [illegible] mulieribus [illegible] poſſeſſorio [illegible] ¶ R[illegible] qu[illegible] tan[illegible] pe[illegible] nente [illegible] n[illegible] fieri prohibentur [illegible] nemo [illegible] renunciare *arg.* [illegible] *C. qui ac*[illegible] *l. licet. C. eod. tit. §. ſemper. de*[illegible] *§. hodie. Inſtit. de except.* ¶ [illegible] excipiens [illegible] de terris, cenſetur [illegible] 2

2. lib. 2. Similiter probatione [illegible] per [illegible] probatio [illegible] non exceptatur. Ba[illegible] & ibi Iaſon *col. 5. ad fin. verſic. 2. principaliter.* [illegible] *in repet. l. admonendi. colum. 8. ad fin. & ſeq.* [illegible] *ff. de iureiur.* [illegible] parte [illegible] 3

non opponente admittitur probatio contra præſum[illegible] turis & de iure Innoc. *in c.* [illegible] *de* [illegible] *dus de re iudic.* Reſe[illegible] & ſequitur Rom. *in* [illegible] *fit. 2. fallit.* ¶ Similiter valet probatio facta poſt pu[illegible] ſtationes parte non opponente [illegible] Cornel *in conſ. 27 colum.* [illegible] *poſt medium* [illegible] quæ ſimul proponi non poſſunt, cumulantur tamen pa[illegible] non opponente. Aret. *in con*[illegible] *colum 4. in 3. dub.* [illegible] debet op[illegible] ante litem conteſtatam ſecundum Aret. ibi [illegible] idem A[illegible] *in conſil. 138. ad finem.* quæ deciſio maxime videtur face[illegible] ad propoſitum noſtrum. ¶ E[illegible] in ſpecie quando agitur poſſeſſorio [illegible] exceptio dom[illegible] admittatur parte non opponente, eſt [illegible] *in d. c. 1. de reſtit. ſpol.* tra[illegible] Alex. *in l. naturaliter §. nihil commune in 14. fallent. ff.* [illegible] *poſſeſſ.* [illegible] *colum 1. verſic.* [illegible] *& in conſil.* [illegible] *libr. 5.* Dec. [illegible] apoſit [illegible] *105.* hoc [illegible] in fortio[illegible] volo[illegible] Anchar. *in conſil. 46. In prædicta quæ* [illegible] *colum. 1.* [illegible] *verſ. & ſi dicatur & colum* [illegible] bi, qu[illegible] debet pronunciari [illegible] petitorio, q[illegible] de [illegible] eſt. non[illegible] tuto, quod vbi [illegible] poſſeſſorio, quæſtio per[illegible] ad petitorium in [illegible] debeat [illegible] ¶ Amplius di[illegible] quod 4

non ſufficeret fuiſſe oppoſitum [illegible] procedere [illegible] petitorio, niſi pars opponens appellet ab admiſſione petitorii. Aretin. *in l. naturaliter. §. nil commune.* [illegible] *de acquirenda poſſ.* [illegible] ſequitur Felinus *in cap. inter monaſterium.* [illegible] *colum. 14. poſt medium.* [illegible] *forte tamen eſt neceſſaria de re iudicata* ¶ [illegible] iſto caſu quando de vtroque cognitum eſt, licet pronun[illegible] debeat ſuper vtroque, tamen mandatur executioni ſolum [illegible] *dict. cap. cum dilectus. & cap. cum eccleſia Sutrina. in fin. de cauſ. poſſeſſ. & propriet.* Cornel. *in conſil. 112. colum. 2. ad finem libr. 1.* Plus voluit Br[illegible] Aſten. *in conſil. 21. columm. 3. poſt medium verſicul.* [illegible] *quo ſuit.* quod obti[illegible] nens in petitorio debet obtinere [illegible] allegat textum *in dict. cap. 1.* & ibi Bald. *de reſtit. ſpoliat.* in quo tamen contrarium videtur velle. Al[illegible]xand. *in d. conſil. 21* [illegible] *libr. 5* vbi quod ſolum pronunciatur ſuper poſſeſſorio ad effectum [illegible] quis teneatur ad expenſas litis, reſpectu poſſ[illegible] & idem tradit Alexand. *in conſil. 76. colum. 2. lib. 2.* ¶ Amplius dico quod 5

vbi cognitum fuit de poſſeſſorio & petitorio ſimul, licet ſuper vtroque pronunciari debeat, tamen ſi pronunciaretur ſuper petitorio tantum, valeret ſententia. Socin. *in conſil. 98 colum 3 libro 4.* Cornel. *in conſil.* [illegible] *colum. 3 libr. 4.* A[illegible] do Paul. de Caſtr. *in conſil 132. In cauſa quæ vertitur Piſis inter dominam Biccin colum. 2. circa medium. libr.* [illegible] vbi etiam voluit Paul. valere ſententiam qua [illegible] primo pronunciatur ſuper petitorio, deinde ſuper poſſeſſorio. ¶ Amplius videtur quod [illegible] vbi liquida ſunt iura petitori non 6

ſit ferenda ſententia ſuper poſſeſſorio. Anchar. *in dict. conſil. 46. colum. 1. poſt medium. verſic. & ſi dicatur. per text. not. in cap. paſtoralis. de cauſ. poſſ. & propriet.* ex qu[illegible] dicto videtur inferri ad confirmationem eius quod voluit Brunus *in dict. conſil. 21.* quod obti[illegible] nens in petitorio debeat obtinere etiam q[illegible]o ad commodum expenſarum, ſuper quo tamen dubito. ¶ Secundo reſpondeo, quod probatio dominii etiam notoria pe[illegible] ſtotum [illegible] quæ inducunt notorium, *cap. ex tenore.* vbi Doct. *de appell.* quod procedit, licet in cauſa concluſum ſit [illegible] ndum mag[illegible] om-

[illegible] opinionem Socin. *in conſil. 96. colum. penult.* [illegible] oppoſitum [illegible] ad [illegible] exceptionem [illegible] *notatur in dicto §. nihil.* [illegible] *colum. 8. ad fin.* [illegible] *colum.* & Alexand. *colum. 10. ad fin. in 10. fallentia.* [illegible] *colum. fin.* [illegible] *in conſilio* [illegible] *colum. 4 ad fin.* [illegible] Dec. [illegible] principaliter [illegible] quæ [illegible] ſententias latas in [illegible] Michaelis [illegible] poſt, ſi ante ſententias: probatio [illegible] quia mulieres fuerunt ſpoliatæ authoritate [illegible] reſtituere. *glo. fin. in cap. præſentium 6. q.* [illegible] Arch. *in cap. quorundam 74. diſtinct.* [illegible] *ff. de acquirenda poſſeſſione.* Baldus *in conſil. 147. libr. 3.* Socinus *in conſil.* [illegible] *colum.* [illegible] *conſil. 18. colum. 14. lib. 1.* [illegible] quia Iudic [illegible] renunciauerit [illegible] & quæ ex his, quæ [illegible] Bald. [illegible] *libr. 2.* Rom. [illegible] *in conſil. 157. colum. 2.* [illegible] *colum. 1. in conſil.* [illegible] *colum. 3. ad fin. in regula non valentem* [illegible] *ff. de reg. iur. & in conſil. 449.* [illegible] *4. poſt med.* Aut [illegible] allegabant poſſeſſoriorum [illegible] hoatum [illegible] & tunc notorie ostenditur de poſſeſſione Michaelis [illegible] ſententia formam ſententiarum & executionum, [illegible] conſequenter probatur poſſeſſorium partis vitioſum, [illegible] licet. *l. 2. §. Ariſt. ff. de* [illegible] *l. 1. §. quia autem arguendo à ſpeciali ff. de* [illegible] *§ fin. ff. uti poſſi. ubi text. elarus.* Anchar. *in conſil. 274. Ad declarationem.* & [illegible] Baldus *in conſil.* [illegible] *Statuto cauetur quod conductor ad fin. lib. 1.* quod poſſeſſiones [illegible] ſunt fouendæ, ne detur materia delinquendi. *per l. illicitas. in princip. ff. de offic. præſid.* & quod [illegible] ubi poſſeſſio eſt vitioſa, reintegrari quis ad eam non debeat, voluit Paulus de Castro *in conſil. 401. Viſo proceſſu una cum ſententia. colum. 3. in fin. lib. 1.* Anchar. *in conſilio 3* [illegible] *colum. 3. poſt medium. verſic.* [illegible] ¶ Nec obſtat quod dicitur, etiam prædonem ſpoliatum reſtitui debere *l. colonus & l. cum fundum. ff. de vi & vi armat. l. ſi quis à ſe ſimulum. C. ad legem Iuliam. de vi.* [illegible] quia iſtud non procedit quando in proceſſu conſtitit prædonem quem eſſe. Innoc. & Abbas *in cap. cum Eccleſia Sutrina de cauſ. poſſeſſ. & propriet.* ſequitur Rubeus Alex. *in conſil. 167. colum. 4.* ¶ Rurſus oſtenditur eo caſu poſſeſſio Michaelis antiquior, ideoque [illegible] tuendus. Bart. *in l. ſi duo in prima colum. 2. ff. uti poſſid. & in conſil. 12.* [illegible] Alexand. *in conſil. 76. colum. 2. lib. 2. in conſil. 45. & in conſil. 81. lib. 5. & in conſil. 130. lib. 5. not. in c. licet cauſam de prob.* potiſſimum quia oſtenditur titulus ſententiæ ab ipſo Michaele per quem poſſeſſionis cauſa fit iuſtior. Alexand. *in dicto conſil. 76. colum. 1. ad finem libr. 2. not. in dicto cap. licet cauſam. ubi* Dec. *colum. 8.* & idem Dec. [illegible] *conſil. 56. colum. fin. in conſil. 109. colum. 1. & in conſil. 109. colum. fin.* [illegible] imo ſine titulo ſententia videtur ſufficiens ad excludendum agentem poſſeſſorio, quia exceptio rei iudicatæ obſtat agenti poſſeſſorio, quia res iudicata inducit notorium, & per eam notorie apparet de non iure agentis. Oldr. *in conſil. 111.* [illegible] *colum. 3. poſt medium per text. in cap. cauſam* [illegible] *de offi. deleg.* allegat etiam Innoc. *in cap. ex conqueſtione de reſtitutione ſpoliat.* Igitur ſiue reſpiciamus ad petitorium, potior erat conditio Michaelis, qui in eo iam obtinuerat in tot iudiciis, ſiue conſideramus ad poſſeſſorium partis, erat omnino inutile, per conſequentiam probationes eius admittendæ non erant. *l. ſi duo. §. idem Iulianus. ubi* Bartol. *in princip. ff. de* [illegible] *l. ad probationem.* [illegible] *ubi* Bald. *in 2. notab. C. de probat. & l. ſi defenſor. § qui interrogatus in verſ.* [illegible] *ff. de interrog. act.* & quod ibi Baldus *per illum text. cap. cum dilectus.* [illegible] *de elect. in c. cap. cum contingat. de offic. deleg.* [illegible] *text. in l. hac ſtipulatio. §.* [illegible] *ff. ut leg.* [illegible] alias tot iudicum ſententiæ inutiles & eluſoriæ fierent, quod dicendum non eſt. *l. ſi quis rem.* [illegible] *gloſſ. ff. de arbitr. l. ſi prætor ff. de iudic. & l. fin. ff. ne quid in loco publico.* ubi ad eum modum arguit [illegible] Socinus *in conſil. 259. columna* [illegible] *ante medium libr. 2. conſilio 41. ad fin. libr. 3.* [illegible] *in l. ſtipulatio non valet & in l. decima. colum. 2. circa finem. ff. de verborum obligationibus.* Imo procedit argumentum [illegible] apertius, in qua fit extenſio [illegible] caſu [illegible] fiat [illegible] *capit. ſi curat.* [illegible] *communi. at. libr.* [illegible] *l.* [illegible] *in prin. ff. de* [illegible] *l.* [illegible] *lum. 4* [illegible] *§ fin. in 3.* [illegible] *ff. de* [illegible] C. [illegible]

¶ [illegible]

tæ, & [illegible] impedi [illegible] Paulus [illegible] autem [illegible] ſemp [illegible] ctebat, [illegible] *in fi. ſalem* [illegible] *in conſil. 4* [illegible] *conſil. 52. colum. 1* [illegible] *in conſil.* [illegible] *poſt med.* [illegible] adimplere, [illegible] ad [illegible] Cornel. *in conſ.* [illegible] *colum. 2. lib.* [illegible] *ſil. 99. colum. 2. poſt* [illegible] *libr. 4.* [illegible] non adm [illegible] *tran act.* Non [illegible] primo Sen. [illegible] quod poſſeſſio tranſferretur [illegible] nam reſp [illegible] transferatur poſſeſſio ex contractu inutili [illegible] translati ſit indebite & [illegible] ſine cauſa, vel [illegible] vel indebite [illegible] poſſeſſionem. Bar. *in l. ſi a domum col. fin. verſic.* [illegible] Alex. *in conſil.* [illegible] *libr. 4.* [illegible] Rubeus, [illegible] Loue ſine iuſta cauſa [illegible] ergo [illegible] reintegrandi [illegible] *in conſil.* [illegible] *poſſidet. ad fin.* [illegible] *de acquir. poſſ.* quod ingrediens [illegible] alterius ex decreto Iudicis [illegible] contra turbantes poſſeſſionem, quod dict [illegible] communiter, per Iaſ. *in* [illegible] fiet ad poſſeſſionis defenſionem. [illegible] ¶ Amplius æquitas mandat non [illegible] poſſeſſionem apud alium ex contractu inutili, quem ius non implet, ergo recuperari poteſt ex æquitate. *l. ſi me & Titium ff. ſi cert. pet.* ſecundum Bart. *in l. ſi colon. C. de agr. & cenſ. lib. 11.* not. Iaſon *in d. l. ſi me & Titium. col. poſt medium. verſ. item per iſtam legem dicit.* not. Bar. Alex *in conſil. 91. colum. 2. poſt medium. verſ. competit etiam. & in conſil. 92. colum. 1. circa medium lib. 5.* neque ſequitur, poſſeſſio transfertur ex contractu inutili, ergo recuperari non poteſt, ſed eam manere oportet apud eum in quem translata eſt, etenim remedia conditionum ſine cauſa indebiti & cætera id genus, in hoc ſunt prodita, [illegible] perentur quæ in alios transferuntur indebite & ſine cauſa, & in terminis quod recuperari debeat poſſeſſio ex eo quod per aduerſarium impletum non fuit, tradit Bald. *in conſil. 371. Si elapſum eſt libr. 2.* ¶ Quorum omnium habenda ratio videbatur per magnificum Senatum Taurini, à quo fuit appellatum aut ſupplicatum, quando petita fuerat cauſa ſummarie finiri viſis & [illegible] lectis iuribus partium ad formam principalium decretorum, per quam clauſulam ſummarie, ſimpliciter, de plano, ſola facti veritate inſpecta poteſt Iudex dicere ſententiam etiam ea cauſa non allegata. Alexandr. *in l. ſi ita ſtipulatus §. Chriſogonus. colum. 10. ff. de verbor. obligat. & in conſil. 164. colum. 2. libr.* [illegible] Socin. *in conſil. 146. colum. 8. libr.* [illegible] *in conſil. 160. colum. 8. circa medium libr. 1. & in conſil. 11. ad finem libr. 3.* Cornel. *in conſil. 80. colum. 2. libr. 3. not. in cap. dilecti filii. ubi* Decius *colum. 3. extra de iudiciis.* Quibus conſequens videtur fuiſſe male appellatum, ſaluo ſaniori iudicio, maxime quia aduerſum iudicata nihil productum eſt noui exceptata transactione inefficaci. Taurini 5. Iulii. MDXXXV. Aymo Crauetta ex Sauiliano, I. V. D.

SVMMARIA.

1 *Exceptio oppoſita probari debet in ſua forma & ſpecie, ita quod concludat ſeriem exceptionis appoſitæ.*
2 *Teſtis productus ad probationem fraternitatis debet rationem reddere, etiam non interrogatus,* [illegible] *non cadit in ſenſum teſtis.*
3 *Tractatus cum aliis* [illegible] *in deciſorem.*
4 *Quando teſtes* [illegible] *dictum.*
Forenſis præſumitur ſcire ſtatuta non loci, in quo contrahit ex longa [illegible]
6 *Præſumitur dici contra eum, qui id aſſerit aut affirmat quod ignorat.*
7 *Ratio* [illegible] *teſtium* [illegible] *non præſtat.*
8 *Inſtrumentum* [illegible] *non debet* [illegible]
9 *Sola* [illegible] *fidem probationis.*
10 [illegible] *quæ ad aſtimonium communiter.*
11 [illegible] *in cauſa magna non videtur* [illegible]
[illegible]
[illegible]
[illegible] *productos ad eam* [illegible]

CONSILIVM [illegible]

Pro nob. [illegible] Magdalena [illegible]

D[illegible] Conſtantinus Bo[illegible] auditum [illegible] mente egreg[illegible] Con[illegible] [illegible] tionem [illegible] [illegible] in ipſi [illegible] Bart[illegible] [illegible] Con[illegible] [illegible] *verſic. extra quam C.* [illegible] *in fin. lib.* [illegible] *in cap. cum ven.* [illegible] *16. verſic. quarta* [illegible] [illegible] umento, ex eo [illegible] *ſaul. 2. patet* [illegible] quod [illegible] [illegible] aliquis cuntentorum [illegible] bato, peti poſſe qu[illegible] Bald. *in conſil.* [illegible] batio [illegible] quia [illegible] [illegible] Quæ probat[illegible] [illegible] tur prox[illegible] [illegible] *colum. 4. ad fin.* [illegible] [illegible] Conſtit[illegible] illus[illegible]

2 exce[illegible] debet in [illegible] & ſpec[illegible] quod conclud[illegible] Angel. *in conſil. 6.* [illegible] Ioann. de Ana. [illegible] *161.* [illegible] plene & [illegible] ita quod neceſſ[illegible] etiam præſ[illegible] quæ ſcribit Petrus de Anch. [illegible] & tractarent tanquam [illegible] fratrum, & eo[illegible] nomine vocant, [illegible]

3 dit, quod [illegible] teſtis prod[illegible] ber rationem ſed [illegible] etiam non [illegible] ſequitur Decius *in conſil. 371* [illegible] *conſil. 424. & 531* [illegible] quaſi poſſeſſionem conſang[illegible] Bald. [illegible] *Mortuo filio* [illegible] quod [illegible] ſequitur [illegible] Bald. non alleget. [illegible] *C. de teſtam.* ſed vlt. D. [illegible] Paul. de Caſtr. *in conſil. 434. Reſpondeo* [illegible] quando [illegible] præiudicio, puta de hereditate, non ſuffic[illegible] quaſi poſſeſſio [illegible] licet omnino affirmare non au[illegible] ¶ Reperio tamen quod idem Dec. impugnat illud dictum Bald. *in conſil. 54* [illegible] *poſt med.* dicens ſufficere quaſi poſſeſſionem, & quod opinio communis eſt contra Bald. Corn. [illegible] *colum. 10 ad fin. verſic.* [illegible] *3.* refert Fulg. [illegible] *C. de probat.* dicere, quod communis opinio eſt ſufficere quaſi poſſeſſionem in decisoriis. [illegible] Paul. de Caſt. *in conſil. 91. In cauſa quæ vertitur in ciuitate Maſſa. col.*

[illegible] *in conſil.* [illegible] [illegible] ¶ [illegible] ¶ [illegible] *col. 3* [illegible] Nec obſtat [illegible] ¶ [illegible]

3 [illegible] cum hic [illegible] habent [illegible] Primo, [illegible] ¶ Secundo quia etiam ex eius [illegible] ſuffic[illegible] & legitime, [illegible] communi[illegible] demdo- [illegible] neceſſi- [illegible] ob [illegible] *verſic.*

4 [illegible] teſtis [illegible] habe[illegible] ¶ [illegible] quod ipp[illegible] factum [illegible] non [illegible] eund[illegible] *in conſ.* [illegible] ¶ [illegible] But. quia loquitur quando teſtis in eadem [illegible]

[illegible]

[illegible]

7 [illegible] tam mulris, appar[illegible] [illegible] Conſtantiſ [illegible] Rachom [illegible] & Dominicus [illegible] nihil probat [illegible]

¶ Idem [illegible] quod non prob[illegible] de falſo quando continet non ve[illegible] Bal[illegible] Abbat. in conſil. [illegible] Curtius iunior [illegible] Idem in ſcriptura priuata quæ dicitur [illegible] de falſo, quando continet non veritatem [illegible] Alex. [illegible]

8 [illegible] non veritatem [illegible] ¶ Nec non probant [illegible] Conſtantiu[illegible] & Dominicum [illegible] Bart. in l. de minore. §. plurium. column. [illegible] Alex. in conſil. 70. col. 2. [illegible] loquens de omnibus cognoſcentibus [illegible] & cum omnibus locuti fuerunt, tradit [illegible] conſil. 429. ad ſin. ver. quia dicit quod non [illegible] ¶ Decimo [illegible]

9 [illegible] Soc. [illegible] 194. column. 6 [illegible] ¶ Secundo teſtis Antonij Mathæi [illegible] [illegible] ſtatu credulitatis, dixerit ſe neſcire, tamen teſtis eſt teſtem de fa-

[illegible] §. [illegible] Alexandr. [illegible] Bald. [illegible]

¶ Rurſus, cum neſciat reddi aliquam cauſam [illegible] ſimonium [illegible] gloſſ. Bartol. [illegible]

[illegible] 10

[illegible] ¶ Decimo [illegible] inducere etiam præſumptionem, quæ omnis probandi transferat in aduerſarium [illegible] Rurſus, ut operetur nominatio ad inducendum præſumptionem [illegible] lib. 4. ſed ex dicto iſtius teſtis apparet eam loqui certa nominatione plus aqua frigida, in qua nominatione ita frigida & cruda, quæ potius dicitur ſieri cauſa aut ioci aut familiaritatis, ſine dubio putarem eam non inducere præſumptionem [illegible] ad probandum aduerſarium. In alia autem non [illegible] quia Doct. varie loquuntur. Amplius iſte teſtis [illegible] pectat, etenim loquitur ſoli[illegible] cum Bartho[illegible] quam [illegible] matrem Conſtantii & Dominici, deinde inte[illegible] Dominicum [illegible] ab ipſa Bart[illegible] ſe non recor[illegible] Obſecto, Bartholomæa & Dominicus agebant in eodem loco, an

 non

non [illegible] nam [illegible] item [illegible] Bartho [illegible] [illegible] mum est [illegible] quando [illegible] non [illegible]

[illegible] Ruth [illegible] Dominici & Constantij [illegible] Dominicus [illegible] horum testium [illegible] explicata [illegible] ¶ Et est etiam [illegible] nullatenent [illegible] ergo suspecta, cum agatur de causa magni [illegible] Iacob Butr. *in l. 3. in princ. ff. de testam.* [illegible]

11 Alex. *in consil.* [illegible] *in fin. in consil. 137. colum. 1. lib.* [illegible] etiam [illegible] possidens in causa magna non videtur integer [illegible] exceptione maior. Ancha. *in consil. 194. In causa & quæstio* [illegible] *colum. fin. circa med.* Alexan. *in consil. 91. versicul. præterea ista te-stis lib. 6.* Decius *in consil. 310 colum. fin. circa med.* quod [illegible] videtur hic procedere duobus fundamentis, primo quia non probatur h[illegible] de bona fama [illegible] ius testis, per doct. Bald. *in l. si quis testium de testibus* vbi quando testis est nullius famæ neque bonæ [illegible] neque malæ, licet omnino non repellatur à testimonio, minus tamen ei creditur: si vero esset bonæ famæ, crederetur ei, sed hic de bona fama nulla apparet. Secundo quia licet sola paupertas [illegible] repellat testem [illegible] vitæ honestæ & bonæ conuersationis, vt per [illegible] Gloss. & Doct. *in l. 3. ff. si quis testium de testib. §. sancimus in auth.* [illegible] Spec. *[illegible] de testib. §.* [illegible] *versicul. item quod est pauper* Alex. *in consil. 65 in fin. libr. 1. & in consil. 149. colum. 2. in fin. lib. 4.* Aret. *in consil. 15* [illegible] *versicul. ad secundam de paupertate* Dec. *in consil. 63 colum. 4.* [illegible] *in prin. colum. 1 ff. qui satisd. cog. & in authen. præ-terea* [illegible] *colum 12. C. vnde vir & vxor.* licet aduocatis & procuratoribus plerisque aliud in [illegible] videatur, qui putant pauperem statim repelli [illegible] tamen istud procedit quando cum paupertate concurrit alius defectus: nam per se non alius sufficie[illegible] ad [illegible] co[illegible] 11. *Quærimus col. 2 in fin.* vbi quod repellitur pauper & [illegible] partis à testimonio, & si pauper [illegible] ad idem repellit. Ad idem adduco Roman. *in consil. 382.* vbi quod repellitur pauper subditus producentis, licet subiectio sola non absolute repelleret. Ad idem adduco Ancha. *in consil. 64 colum. penult. circa medium* vbi quod paupertas & affinitas testem repellunt modo vltra causam paupertatis ista testis est suspecta ex causis supra memoratis. iuncta autem causa tanti mente paupertatis, res videtur sine dubio, [illegible] suspiciones, quod vnica operari non potest *Lanfrannenta leg. 3. ac [illegible]*

12 *[illegible] modo. & l. non epistolis C. de probatio. gloss. in [illegible] in princip. ff. de ex-cu. tut. c. apostol. illo vos. de pigno. c. apetul. ad nostram de emptio. & vendictio cum similibus.* & vltra defectus istorum testium supra commemoratos, accedit etiam vtilitas conditionis & personarum ipsorum testium descendens à mala eorum vita & conuersatione, quæ vilitas iuncta paupertati sine dubio testes repellit Bald. *in capi-tul. si quis testium. de testibus.* Anchar. *in dict. consil. 64 colum. penult. & in consil. 127. Ad corroborationem colum. 3.* Alexand. *in in consil. 141 & in consil. 137 lib. 6.* quæ paupertas æque nocet aliorum testimonio. Et [illegible] o istud committeretur iudicantis arbitrio, quis iudex æquitatis & iustitiæ studiosus istos Susannæ testibus [illegible] deteriores crederem. Ac [illegible] quod secundi [illegible] Magdalenæ [illegible] deponit [illegible] a teste [illegible] Constantius & Dominicus non [illegible] & hæc sit vnica [illegible] [illegible] *in consil. 74.* Imo [illegible] detur plene probat [illegible] præsumptionibus & [illegible]

[illegible] Constantium & Dominicum, [illegible] imo [illegible] & hic videtur [illegible]

[illegible] Constantius [illegible]

[illegible] Alexan. [illegible] Bartholomæa [illegible] Bald. [illegible] Socin. [illegible] Corne. [illegible] Alex. [illegible] Socin. *in consil.* [illegible] ¶ Præterea etiam debent [illegible] quam dirioles testes [illegible] nam licet [illegible] testes [illegible] illud tamen est [illegible] præferuntur, testes [illegible] pauperibus [illegible] facilius corrumpuntur *gloss. in d. l. 3 de testibus.* Bar. [illegible] *fin. ff. de off. præsid.* Anchar. *in consil. 137. Summa prudentia colum.* [illegible] Aretin. [illegible] *colum. 7.* Calc. [illegible] *colum.* [illegible] D[illegible] *colum. 4. post medium* ¶ Rursus [illegible] præferenda teste Magdalenæ, quia [illegible] sint [illegible] pauciores, qui tamen plures [illegible] C. de eden. [illegible] dictum pro nobis refert Alexan. [illegible] *in consil. 1* [illegible] *causa & lite domina Bartholomea. ad fin. libr. 2.* Cornel. *in consil.* [illegible] *videtur prima facie dicendum. colum. 2 versicul. & vbi testes* [illegible] Decius *in capitul. licet causam colum.* [illegible] *versicul. & notandum e.* [illegible] *pro-bat.* Certe si Constantius & Dominicus fratres fuissent, verisimile est Constantium conuentum facile reperire potuisse [illegible] plures aliquas illud enunciantes, maxime in [illegible] diuisionis, de qua meminit quarta testis partis in hoc [illegible] & singularis, & hoc argumentandi modo in simili causa vtitur S[illegible] *cin. in consil. 187 colum. 4. versicul. non omitto libr. 2.* Ad hoc, quia inter viuos alios [illegible] testes, qui stipitem cognouerunt, ioannem Bartholomæam, qui examinati non fuerunt. Item non est [illegible] testes p[illegible] non meminisse de aliquibus personis quibus dici audiuissent ipsos Constantium & Dominicum fuisse fratres. Ad hæc insuper, nam testes multo minimæ primæ testis partis dicunt cognouisse Bartholomæam matrem Constantij, si illa fuisset mater etiam Dominici, quomodo potuerunt primus & tertius testes partis dicere non cognouisse parentes ipsorum Constantij & Dominici: sed [illegible] Bartholomæam prudentes fuerunt, verentes ne eorum falsitas palam fieret [illegible] ius commemorarent. Præterea ex testibus agentis ostenditur in loco R[illegible] fuisse domos duas Borga [illegible] principales in quarum altera morabatur Dominicus, in altera autem [illegible] Bartholomæa, quæ reputabatur [illegible] Dominici [illegible] testes [illegible] nec [illegible] ter consi[illegible] famam [illegible] posse [illegible] *[illegible] quæro [illegible] ff. de [illegible]* [illegible] *84 ad* [illegible] *septimo* [illegible]

Magdalena [illegible]

[illegible] vbi dicit D[illegible] nullahabet [illegible] nemoiti qui m[illegible] s ſuis & aquali [illegible] patet. § [illegible] ff. de leg. 2. l. si liberis C. [illegible] C. debon [illegible] xime qui Dom[illegible] mant [illegible] mpote [illegible] quia admodum [illegible] ex[illegible]s produ[illegible], potuerint eſſe p[illegible] mmt [illegible] ponder quod [illegible] diuiſe [illegible] miſſe [illegible] a Borg[illegible] llis. § Secundo re[illegible] dendo [illegible] probandi [illegible] eiuſdem nominis, [illegible] c[illegible] B[illegible] in leg. ſi rem [illegible] ff. de rei vendica. & in l. ſi quis [illegible] ſi inter duos in ſin. ff. de leg. Socinu in conſil. 15. colum [illegible] non [illegible] prod non videtur eſſe probatum libr. 3. non obſtante quod teſtes partis probaſſent famam, quod nunc [illegible], illa tamen non ſatisfaceret nisi aliis concurrentibus. Bartol. in l. non [illegible] C. de prob. vbi notat requiri famam & tractatum ſeu qu[illegible] poſſeſſionem Salicet. Alex [illegible] & Doct. relati per Dec. in c. per tuas [illegible] & [illegible] de probat. & idem D[illegible] c. in conſil. 5[illegible] column. penult. Iaſon in dict. leg. ne queproſeſſio. C. de teſtam. in princip.

14 § Item ex alio non poteſt dici probata fama, quia in [illegible] in quibus ſufficit probatio famæ, teſtes producti ad eius probationem oportet eſſe omni exceptione maiores. [illegible] in rep. l. admonendi colum. 108. verſicul. confirmo. quia quoticunq; ff. de iureiur. et l[illegible] dit Decius in conſil. [illegible] 5. colum. 2. circa medium quod [illegible] puro ſtupendum, ſed teſtes examinati [illegible] perſo[illegible]. § Item ad probationem [illegible] teſtes [illegible] oportet rationem etiam non interrogatos [illegible] in c. cum oporteat. de accuſ. cum aliis adductis per [illegible] colum. 4. de app. [illegible] in conſil. 5 colum. 3. ad fin & [illegible] colum. 3. circa med. [illegible] teſtes partis etiam interrogati nullam adducunt rationem [illegible] ineptam, vt ſupra oſtendimus § Item in caſibus in quibus ſola fama probat, debent teſtes deponere eam habuiſſe originem à perſonis honeſtis & fide dignis. quæ qualitas debet articulari & probari. Anchar. in c. [illegible] 53 in quæſtione presbyteri. verſic. præterea aduertendum. Decius in conſil. 575. column. 1. verſicul. & tum prædictis alias eſſet in periculoſum, [illegible] teſtibus credere, & conſid[illegible] quod in dict. conſil. [illegible] Dec. loquitur in caſu multo minus damnoſo quam hic. § Poſtremo non prætereo facil[illegible] eſſe [illegible] falſitatis contra partem quæ in alio falſitatem non obſcure dixit, dum primo loco negauit conſanguinitatem agentis per iuramentum quam poſtea conf[illegible] eſt ex productione inſtrumenti dotis Gulielminæ matris. regul. ſemel malus. de reg. iur. libr. 6. & in periurio not. Doctor. in leg. admonendi. vbi Iaſon column. 109. verſicul. 38. ff. de iureiuran. & in falſitate not. Alexandrum in conſil. 15. colum. penultim. verſicul. 2. poteſt tunc. libr. 1. § Quibus conſequens videtur non probatam eſſe exceptionem partis, & vbi aliquid probatum dici poſſet id expugnatum fuit fortiùs [illegible] ex probationibus agentis, in cuius fauore potuit non dici ſententia. Taurini 26. Iulii. 1545. Et ita poſtea iudicatum fuit per Magnificum conſilium Taurini, & condemnatus reus ad omnia petita, vnde cum pars appellaſſet ad ſupremum Senatum anteà mea tranſegit, remittendo parti fructus tantum perceptos. Et ſi [illegible] voluiſſet potuiſſet in teſtes animaduertere, quorum falſitas clariſſime fuit denudata. Aymo Crauetta ex Sauilliano I.V.D.

SVMMARIA.

1 *Teſtator cenſetur ſe conformare cum diſpoſitione ſtatuti*
2 *Vna præſumptio tollit alteram.*
3 *Fœmina non poſſunt attollere ſaydam domus.*
4 *In vocatis ad ſucceſſionem propinq[illegible] non conſideratur ratio agnationis*
5 *Verba ex lineis patrui ſunt interpretanda mas[illegible] taliter & [illegible]*

CONSILIVM CCL.

Pro nobili Magdalena Crauetta à Sauiliano.

DIVINO ſubſidio ex corde poſtulato Iam reuocatur in dubitationem cauſa nobilis Magdalenæ C[illegible] ob ſtatutum loci Rochonixii excludentis fœminas propter maſcul[illegible], ob id ſubſtitutio facta per Conſtantium Borgarellum de proximioribus videtur exaudienda & intelligenda ad formam ſtatuti, id eſt, quod [illegible] verba ſubſtitutionis, pertine[illegible] ad pr[illegible]

1 ximiores maſculos, non etiam fœminas, [illegible] quia teſtator [illegible] conformare voluntatē ſuam cum diſpoſitione ſtatu[illegible], [illegible] illos præferre qui à ſtatuto præferuntur. l. [illegible] § inter locatorem. ff. loca. l. ſi duo. & ibi Bald. ff. de acq. poſſeſſ. hered. Bartol. in l. [illegible] § [illegible]

[illegible]

conſil 148. ad fin libr. 2. [illegible] conſil 101. colum. 4. ad fin. & [illegible] con l. 16[illegible] libr. 4. in qu[illegible] Bar[illegible] non in vera [illegible] de [illegible] non tamen ad [illegible] in parte [illegible] Bart. vera non [illegible] § [illegible] ar nominem [illegible] applicare voluntatem ſuam diſpoſitioni ſtatuti. & ne habe[illegible] agnatio [illegible] oſtenditur, quia filio ſuo decedenti ſubſtituit Ioanninam filiam, [illegible] agnati [illegible] nunquam [illegible] teſtatore [illegible] ſtatuto, quo [illegible] mulier ad ſucceſſionem admittitur. Alexan. de in conſ. [illegible] colum 2 poſt med. verſic. nec obſtat quod ſtatutum. & in conſil [illegible] 9. colum. fin verſic. 3 poteſt reſponderi. lib. 7. vbi loquitur etiam in [illegible] alie[illegible] agnati, & ſolum conſiderari an conſeruetur agnatio, non etiam ſi talis mulier ſit agnata, clarius Socin. in conſil. [illegible] lum. penul. verſic. præterea dictum ſtatutum. lib. 1. vbi quod ratio agnationis non conſideratur in ſtatuto per quod [illegible] vocatur ad ſucceſſionem, licet ſit agnata, quia per eam agnatio non ſeruatur. Etenim ſi ſtatutum aut teſtator ad [illegible] perſonas vocaſſet in quibus [illegible] agnat[illegible] non [illegible] quibus euaneſcit. [illegible] libr. 3 vbi [illegible] loquitur in ſororibus agnatis & [illegible] Soci[illegible] in conſ. l. 8 [illegible] fin. verſ. præterea licet ducatus. lib. 4. Dec. in conſil. 466. colum [illegible] licet fœmina voca[illegible] ſit agnata, [illegible] cum ea extinguebatur non eſt motus ob non [illegible] agnationis [illegible] ſi [illegible] repetitum, poſtliminium, [illegible] nuptiarum, & [illegible] § Similiter dicimus rationem agn[illegible] non eſt habita in ſtatuto, quo[illegible] agitur de hereditate [illegible]. Alexand. in conſil. 85. [illegible] verſic. optime colu. fin. lib. 4. & [illegible] principaliter lib. 6. Dec. in conſ. 589. colum. 1. poſt med. Iaſon [illegible] col. [illegible] poſt med. ff. de in[illegible] Brun. de ſtat. [illegible] quæſt 16 in [illegible] colum. circa med. [illegible] 68. § Ideo videmus [illegible] ſtatutum vocantis agnatos ad ſucceſſionem non pertinere ad fœminas agnatas per quas non cuſtoditur agnatio. [illegible] Bald. in conſ. 372. circa quæſt. 2. verſ. [illegible] Ioann. de Anan. in conſil. 4[illegible] Alex [illegible] colum 4. [illegible] Aretin. in conſil. 142. [illegible] Socin [illegible] l. 227 colum. 9. verſ. 6. & [illegible] libr. [illegible] colum. 4. libr. [illegible] in conſil. 124. colum. 3. verſ. & per [illegible] lib. [illegible] in conſ. 219 column fin. lib. 3 & in conſ. 41. colum. 3. & ſequentes 4. vbi [illegible] quæſt. [illegible] poſſ. quod [illegible] fœminæ non poſſunt attollere ſaydam domus [illegible] 5
[illegible] in conſil. 26 & in conſ. 8 colum 3. eod lib. 4. Dec. in rub. C. [illegible] ff. de [illegible] in conſil [illegible] colum. 2. in conſil. 4[illegible] fin & in conſil. 589. [illegible] § Quod videtur procedere etiam ſtante ſtatuto quod maſculinum concipiat fœmininum, [illegible] adhuc fœminæ agnatæ non excludent cognatos, quia tale ſtatutum intelligitur in materia quæ adaptari poteſt, & quando [illegible] eadem ratio in maſculis, quæ eſt in fœminis. Decius in conſil. 53. column. 2 poſt med. Cornel. in conſil. 97. colum. 7. verſ.

Ii 4 col. &

[illegible]

Iuriſconſulti [illegible] neque Impe[illegible] fa[illegible] [illegible] id ſub lege contine[illegible] ur, de quo lex non [illegible] quod [illegible] in pro ſingulari [illegible] Soc[illegible] us *in conſil.* [illegible] *verſ. item patet lib.* 1. ¶ Quod autem Conſt[illegible] [illegible] tus non comprehendatur à ſtatuto oſtenditur, nam illa verba ex linea patris &c. poſſunt intelligi duobus modis, primo [illegible] do materialiter effectiue pro omnibus qui habuerunt materiam & effectum [illegible] patre, & hoc modo veniunt ſolum deſcendentes à patre, qui in tranſuerſalibus patris non eſt aliqua materia [illegible] ut effe[illegible] patris qui eos non [illegible] nuit. Secundo modo intelliguntur [illegible] hac linea patris [illegible] ut contentae [illegible] pro omnibus [illegible] tur [illegible] b linea & [illegible] nexus [illegible] patet [illegible] & hoc modo [illegible] dicuntur [illegible] ſub ead[illegible] [illegible] An h[illegible] [illegible] *quae verò* [illegible] *mod.* [illegible] *in conſil.* [illegible] *verſic.* [illegible] *ſil.* [illegible] *2. libr.* [illegible] *col.* 53. *vers. 4. contr* [illegible]

[illegible]

C O [illegible]

Pro quadam [illegible] *Illuſtriſſimis & Reuerend* [illegible] *Dominus* [illegible]

Divino [illegible] occupatus [illegible] [illegible] tempus [illegible]

[illegible]

¶ Quod videtur procedere [illegible] Doct. [illegible] *de conſil. lib.* 6. [illegible] Papa [illegible] generaliter verum eſt, [illegible] temporis non requiratur [illegible]

[illegible]

[illegible] men quod Do[illegible] valet con[illegible]do [illegible] de leg. imo fortior eſt [illegible] contra[illegible] *[illegible] ſuper hoc [illegible] & ibi ad.* [illegible] tratus canonicum *capitul. fin. de conſuetu.* [illegible] valet [illegible] Baldus in conſilio 258 [illegible] agitur de præſcriptione [illegible] Anchar. in conſilio 258 [illegible]

3 appellatione [illegible] Abbas [illegible] & in emphyteuſi eccleſiæ quod [illegible] not. Paulus de Caſtro in conſil. [illegible] volumen colum. 2. libr. 1. & idem Paulus [illegible] *ſoluto matrimonio* [illegible] emphyteuſis eccleſiaſticæ tranſeat ad extraneos heredes quod [illegible] conſuetudo. Idem tenet [illegible] ¶ In tali autem conſuetudine [illegible] ſufficit tempus [illegible] annorum [illegible] ſufficere tantum conſuetudinem [illegible] canonicum *cap. fin.* [illegible] & Doctor. [illegible] *conſil.* 43. *colum. 2 verſicul.* [illegible] nam ſi ſufficit præſcriptio quadragenaria adverſus eccleſiam *[illegible] & authen. quas actiones C. de ſacroſanct. eccl.* [illegible] do debet ſufficere conſuetudo. Imo regulariter minus tempus ſufficit in conſuetudine in qua non requiritur quod ſit præſcripta, ſed ſufficit [illegible] tempus decem annorum. Cornel. *in conſil. 103 colum. 4 libr.* [illegible] *libr. primo not. in d. l. de quibus.* Fortius [illegible] Cornel. *in conſil.* [illegible] *libr. tertio.* quod conſuetudo ut eccleſia teneretur reformare [illegible] emphyteuſin, inducitur 10 annis. Stante igitur conſuetudine, non eſt ab ea recedendum [illegible] per principes aut eorum ſucceſſores, quia conſuetudini [illegible] debetur reverentia, [illegible] regum [illegible] & maxime [illegible] Paulus [illegible] Alioquin [illegible] Bal. *in conſil.* [illegible] Romanorum non eſt vilis authoritas, ſed non adeo uſuram extendunt ut uſum [illegible] aut morem [illegible] *Feudi cognitio* ¶ Sed etiam [illegible] conſuetudine [illegible] de iure communi videtur filia ſuccedere in [illegible] bonis emphyteuticis excluſa eccleſia, quia tanquam emphyteuſis eccleſiaſtica [illegible] utriuſque ſexus, etiamſi de eis nihil dicatur in conceſſione. *§. emphyteuſim in authen.* [illegible] *ff. de verb. obl.* Anchar. *in conſil.* 44 [illegible] *de verb. col.* 1. Decius *in c. in præſentia col.* 19. *& ſeqq. extra de prob.* [illegible] ut iſta filia videtur admittenda in emphyteuſim eccleſiæ [illegible] de iure communi ¶ Quinimo plures tenent quod emphyteuſis eccleſiæ tranſeat etiam ad heredes extraneos de iure communi quando conceditur pro ſe & heredibus. Corne. *in conſil.* 172 [illegible] *lib. 2.* ubi atteſtatur hanc eſſe communem opin. *& in conſil. 13. colum. 1. libr.* [illegible] de quo tamen per Dec. *in c. in præſentia col.* [illegible] quia non expedit nec hic dicere, ſed alibi latius dicam [illegible] ¶ Secundo videtur admittenda [illegible] inveſtitura pro ſe & [illegible] quorum appellatione [illegible] veniunt heredes [illegible]

4 ſecundum materiam ſubiectam Bald *in l.* [illegible] *verſicul. & not. ff. de re. dub.* Soc. *in conſil.* [illegible] *col. 4* [illegible] *lib. 1.* [illegible]

[illegible] non eſt [illegible] dicuntur [illegible] *juxta* [illegible] *emphyt.* [illegible] ita quod [illegible] libr. 2. [illegible] in eo [illegible] heredes [illegible] lauden[illegible] & [illegible] in conſil. 43 [illegible] *ff. de verborum obl.* [illegible] nec ſuperſunt per [illegible] emphyteuſis [illegible] dominus directus non ad[illegible] pact. [illegible] conventiones, conceſſi[illegible] *pact.* [illegible] *& probat.* ¶ Non obſtat renunciatio [illegible] dominus directus velit ea uti, tenetur accipere [illegible] cum omnibus ſuis qualitatibus Bald. & Salic. *in l. ſi certus* [illegible] non poteſt acceptare contractum in ſerviti[illegible] Soc. *in conſ. 124.* [illegible] quis [illegible] iure quæſito [illegible] omnibus ſuis qualitatibus, [illegible] renunciatione eſt pactum [illegible] valeat decedente [illegible] non eſt [illegible] noceret [illegible] facta eſt. bald. [illegible] *in conſ. 309.* [illegible] 432 [illegible] ¶ Rurſus [illegible] abſente [illegible] Bald. [illegible] *Cumm. in cap.* [illegible] ad alium non extenditur *l. ſi unus* [illegible] igitur facta in favorem [illegible] non [illegible] quia actus noſtri voluntatis non [illegible] ultra quam gerantur. *l. 1. §. Iulianus. ff. de* [illegible] *pro marit. le. tutori. Cod. de neg.* [illegible] *l. leg. tutores qui Cod. adm. tutor.* [illegible] *quæſtione 1.* [illegible] renunciatio enim eſt ſtrictiuris [illegible] *ff. de* [illegible] *ff. de ſoluto.* [illegible] & in renunciatione not. Paulus de Caſtro [illegible] *tatio vertitur. colum. 2 poſt med. libr.* [illegible] Socinus *in conſilio* 96 *ad fin. libr. 1.* [illegible] eiuſmodi Baldus *in conſil.* 42 [illegible] *Quedam poſt a columna 2 poſt med. libr. primo.* [illegible] *in conſilio 18.* [illegible] *columna 2. poſt med. lib. 3.* ubi quod [illegible] facta circa emphyteuſim eccleſiæ per unum emphyteutam [illegible] eccleſiæ non prodeſt. [illegible] *ff. de feudis* [illegible] *ſuc. contro.* Idem vo[illegible] de Senis. *in conſ.* [illegible] *Quidam Abb. in conſilio 8.* [illegible] Ripa [illegible] *duo fratres columna 2. verſicul.* [illegible] *ff. de verborum obligat.* ¶ Neque obſtat ſi dicatur emphyteuſis eccleſiaſtica non

[illegible]

C[illegible]auetta, e[illegible] D.

S V M M A [illegible]

1 Ex [illegible]

2 Dom[illegible] appelland[illegible]

3 [illegible]

4 [illegible]

CONSILIVM CCLI[illegible]

In cau[illegible] D. [illegible] Antonii de Monte[illegible]mali.

D[illegible] quia [illegible] Antonius [illegible] Ant[illegible] & I[illegible]

[illegible]

[illegible] Bartol. in l. [illegible] Bart lib. [illegible]

[illegible]

[illegible] ratificatione [illegible] sicut [illegible]

[illegible]

[illegible] Sed [illegible]

[illegible] Igitur [illegible] ipsa bona, obligan[illegible] pecunia [illegible] pretium soluisse animo [illegible] praesumitur [illegible]

[illegible] communicata atque [illegible] quia praesumitur acqu[illegible] 78. libr. 2. Socin. [illegible] consil. 192. colum. 5. libr. 2. [illegible] 28. colum. [illegible] 651. & alii saepe Doct. [illegible] dominae [illegible] quantitate [illegible] in bonis donatis non [illegible] quia in actibus [illegible] quod [illegible] praesenti [illegible] temp[illegible] ratus. Ideo [illegible]

[illegible]

ad fin. [illegible] pronunciatur vt habitantes & incolæ [illegible] & paſturæ in [illegible] prædio, teſtimonio [illegible] habitantes tempore laudi cuius dominium [illegible] eſt. qui tamen non firmo hic, imo reprobo [illegible] ſpiciunt vniuerſitatem, veniunt etiam habitatores de nouo, quia ſemper dicitur eadē vniuerſitas. Ideo interdicto populo cenſetur interdicta illis qui poſtea de illo populo fuerunt vel per natiuitatē vel per translationem domicilii. Ideo ſi qui naſcantur inde ad mille annos in populo illo, interdicto non ſublato, eſſent interdicti, vt not. per Ioann. Andr. *in capitul. ſi ſententia de ſentent. excommun. libr. 6.* per Ioann. Andre. *in Nouella* Feder. de Senis. *in conſilio 32. colum. 3. ante med. verſic. & ſecus eſt quando populus. & columna 4. circa med.* vbi etiam Feder. aſſi-
4 gnat rationem, quia † vna & eadem res non debet duplici iure cenſeri *capitul. quia circa. de priuileg.* & ibidem quod hoc procedit, licet omnes homines eſſent diſperſi propter perſecutionem, & ea ceſſante redirent ad habitandum, quia redibit interdictum in eos etiam ſi ſuccedentes eſſent extranei, *per l. grege. ff. de pign.* ſecus tamen vbi agitur de pluribus vniuerſitatibus aut pluribus & diuerſis terris, quia diſpoſitio odioſa loquens de terris alicuius non comprehendit terras futuras, puta interdictis terris alicuius domini non cenſetur interdictæ terræ poſtea quæſitæ Ioann. Andr. *in d. capitul. ſi ſententia. de ſenten. excommun. libr. ſexto.* Feden. *in d. conſilio 32. columna 3. circa princip.* volui tamen allegare illud dictum Cornel. *in dict. conſil. 193. in fi. lib. 4.* vt ſupra probatum, vt cognoſcatur qualis extendatur ad futura hominis diſpoſitio. ¶ Præterea poſito quod iſta bona poſſint dici comprehenſa in donatione, illud procederet cōtra ipſam donantem ſi ipſa poſſideret, ſed hic poſſidentur per tertium poſſeſſorem, contra quem agi non poteſt actione perſonali deſcendente ex donatione, quia obligatio perſonalis non ſequitur fundum *l. quoſdam. § ſi autem. ff. de eden. l. fin. § fin. ff. de contrah. empt. l. 1. § ſi heres. ff. ad Trebell.* ¶ Amplius, etiam ſi filiis domini Ioan. Antonii actio tali competeret ad iſta bona, quod omnino negatur, cum eorum dominium nullo modo in eos translatum dici poſſit ceſſante ſtipulatione notarii, aut ratificatione ipſius dominæ Mentrix, tamen viuente adhuc eorum patre venditore, vendicare illa non poſſunt *l. quæcunque. § fin. C. de bon. quæ lib. auth. hen. niſi vbi gloſſ. C. de bon. mat.* Patre autem defuncto, non eſt veriſimile quod velint repudiare hereditatem eius non iobtentam pro iſtis bonis non ita magnis. ideo tāquam heredes obligabuntur ſeruare alienationem parentis *l. cum a matre. C. de rei vendic. regul. ex qua perſona. ff. de regul. iur. cur. cum ſim.* & not. expreſſe gloſſ. Bart. & Doct. *in l. fin. in computatione. C. de iure delib. & gloſſ. in d. l. cum a matre.* ob id donatrix non cenſetur cogitaſſe de iſtis bonis quæ fuerunt quæſita poſt donationem. Et ita reſpondeo. Taurini. 7. Auguſti. 1535. Aymo Crauetta, ex Sauiliano. I. V. D.

SVMMARIA.

1 *Iuris ambiguu non eſt, matrimonium contractum metu nullum fieri ipſo iure.*
2 *Factum conſiderari non debet, ſed cauſa facti.*
3 *In cauſa dotis tam principaliter quam incidenter Iudex ſecularis eſt competens.*
4 *Ceſſat præſumptio metus ex ſola præſentia Iudicis.*
5 *In impedito non videtur neceſſaria proteſtatio dummodo conſtet de impedimento.*
6 *Ex metu commiſſo per tertium, diſpendium pati non debet is, in cuius fauorem actum eſt habitus niſi metum intellexerit.*
7 *Vbi infertur metus per aliquem reſcindi debet contractus.*
8 *Quando promiſſor aliquid facit, ſemper præſumitur facere ex iuſta cauſa.*
9 *Præſentia prin. quæ facit ceſſare omnem præſumptionem ſi audis aut deceptionis.*
10 *Maritus expellens vxorem obligatur dotes reſtituere.*

CONSILIVM CCLIII.

Diſſolutiones dubiorum pro Magnifica Anna de Ayans, contra magnificum dominum Boniſacium de Salucis.

DIVINO ſubſidio ex corde poſtulato. Reſponſiones ad dubia propoſita per Magnificum virum dominum Albertum Gartum Vicarium generalem Marchionatus Salutiarum, in cauſa Magnificæ dominæ Annæ de Ayans contra Magnificum dominum Boniſacium de Salucis. Duo principaliter videnda ſunt in cauſa prædicta, primo an quæſtio matrimonii quæ dicitur incidenter appoſita, ſit remittenda ad iudicem eccleſiaſticum: Secundo, an cauſa dotis ſententia non dicatur ante inceptam & finitam cauſam matrimonii. ¶ Circa primum dicendum videtur, cauſam matrimonii non [illegible] endam, quia non tractatur articulus iuris, an matrimonium metu contractum eſſet ex ſit aut non, neque tractatur quæſtio an matrimonium probetur ex verbis dictis & prolatis inter partes circa dictum matrimonium, quia fatetur conuentus, & etiam teſtes examinati in eius fauorem probant contractum fuiſſe matrimonium, tantum diſputatur, an adhibitus fuerit metus circa matrimonium, ita nulla agitur quæſtio iuris, an matrimonium contractum metu conſtet nec ne. † Etenim iuris ambigui 1
non eſt, matrimonium contractum metu nullum fieri ipſo iure. *capit. cum locum. de ſponſa. l. ſi mulier. § ſi dum met. ff. quod met. cauſ. cum ſimil.* quia Iaſon not. *in l. interpoſitas. in 1. no. Cod. de tranſact.* Ergo cum diſputetur ſolum an interuenerit metus, dicitur tractari quæſtio facti, nam metus eſt quædam paſſio conſtans in animo: quæ autem in animo verſantur facti eſſe dicuntur *leg. bona fidei. ff. de acquir. rei domin. vbi illud ad factum pertinere.* Iaſon *in l. 2. in princ. column. 7. verſicul. ſecundo princip. aliter. ff. de acqu. poſſ.* Ideo an quis ſuſtinuerit paſſionem metus, probatur per extrinſeca, & ex coniecturis, quia animus aliter colligi non poteſt, ita de probatione metus not. *in d. l. interpoſitas in cap. ſingtus de appellat.* vbi Dec. late. & idem Decius *in reg. in omnibus cauſis. ff. de reg. iur.* & ſic metus dicitur eſſe quid facti duplici reſpectu. Primo ex parte patientis metum. Secundo ex parte inferentis. bene fateor quod vbi metus probatus eſt, dicitur habere quæſtionem iuris, quia ius diſponit an ſit metus iuſtus ex quo actus debeat irritari, ſed iſta quæſtio iuris non verſatur hic reſpectu matrimonii, ſed tantum reſpectu confeſſionis de dote recepta, an illa debeat reſcindi propter metum, vt inferius oſtendam. Plane conſtat iudicem ſecularem poſſe cognoſcere etiam de cauſa ſpirituali incidenter quo ad factum agitur quæſtio. Bartol. *in l. 2. colum. 2. verſicul. iuxta prædicta quæro. ff. de iuriſdict. omn. iud.* Idem Bartol. & Alexand. *in l. 1. ita. ff. ſolut. matrimon. not. in l. quoties. C. de iudi.* & nouiſſime per Decium *in cap. decernimus. colum. 18. extra. de iud.* In quibus locis ſi accurate conſiderarentur dicta Doct. facile oſtenditur quæſtionem matrimonii de qua agitur, ad factum pertinere: quia, vt diximus nō agitur hic de iure, id eſt, an matrimonium valeat initum metu, ſed de facto, id eſt, an metus interuenerit, imo non ſolum incidenter, ſed etiam principaliter poteſt iudex ſecularis cognoſcere ſup cauſa ſpirituali, quando de facto vertitur quæſtio puta ſi conuentus ad decimas, opponat exceptionem ſolutionis, ita quod non ſit quæſtio de iure decimarum Feden. de Senis *in conſilio nonageſimo ſexto. Apparet circa fin. & in conſilio 241. Domino Andrea.* ¶ Confirmatur iſta ratio, quia iſta exceptio meticuloſi matrimonii non fuit oppoſita vt pronunciaretur ſuper nullitate matrimonii, ſed in hoc tantum vt argueretur metus in confeſſione receptæ dotis, quaſi metus adhibitus circa contractum matrimonii præſumatur durare etiam in confeſſione dotis facta non multo tempore poſt ex actuum vicinitate. Cald[illegible] *in conſil. 2. in titul. extra. quod met. cauſ.* Iaſon *in l. ob turpem. column. fin. ff. de condict. ob turpem cauſ.* Et eſt generaliter verum vt durante eadem cauſa metus ſemper dicatur metus durare *capitul. 1. quod metus cauſ.* vbi Innocen. & Doctor. Cyn. Bartol. Baldus & Doct. *in l. 2. Cod. eo titul.* Bartol. & Doct. *in d. l. ob turpem. ff. de condict. ob cauſ.* Socin. *in conſil. 262. colum. 5. verſicul. ex quibus patet reſponſio. libr. 2.* & plurima congerit Decius *in conſilio 299. column. penult. in conſil. 463. column. 4. in conſil. 498. column. 3. poſt med. & in l. in omnibus cauſis. colum. fin. ff. de regul. iur.* Igitur ſi exceptio meticuloſi matrimonii oppoſita fuit ad hoc ſolum vt probaretur metus in confeſſione receptæ dotis, nihil videtur dubitandum, Iudicem laicum poſſe cognoſcere de iſto metu propter cauſam confeſſionis receptæ dotis, nec eſt attendenda cauſa matrimonii, ſed ipſa dotis confeſſio propter quam opponitur metus matrimonii ſemper enim ſpectandum eſt qua contemplatione actus fiat, vt not. Bald. per illum text. *in l. ſi pater. § qui duos. ff. de adoptio. cum ſimil.* quæ ſcribit Decius *in conſil. 281. colum. 5. verſic. & hoc confirmatur.* Ideo non inſpiciunt ad quem verba dirigantur, ſed cuius contemplatione aliquid fiat *l. ſi cui. § ſi Titio.* & ibi Iaſ. *colum. 2. ff. eodem titul.* Socin. *in conſilio 85. colum. 4. verſicul. circa ſecundam difficultatem. libr. 1.* Decius *in conſil. 279. columna 2.* non etiam debemus conſiderare verba ad corticem, ſed effectum propter quem prolata ſunt. *leg. 3. C. de conſtit. & ſubſt. l. 1. § hæc autem verba ff. quod quiſ. ius in alt. leg. ſ. ſiliusfamilias. § 1. ff. quod cum eodem. c. 1. laicum de cler. non reſid.* ſimiliter † factum conſiderari non 2
debet, ſed cauſa facti *l. verum. la 2. ff. de furt. gloſſ. vnic. & ſi Chriſtus. in verſicul. ex cauſa. de iureiur. & in capitul. intelligentia. in verſicul. ex cauſa. de verbor. ſignific. cum ſimil.* Et cum ſolum agatur an dominus con-

co[illegible] pe[illegible] quas confeſſ[illegible] eſt, & de[illegible] [illegible] alteram iudic[illegible] [illegible] qu[illegible] matrimonii [illegible] ſideratur, ne[illegible] tur, ex his quæ [illegible] d[illegible] *grad.* [illegible] *feud.* vbi quod in ſucceſſione feudi frat[illegible] [illegible] ſimul cum fratre vtrinque [illegible] duplex vinculum in altero fratre, q[illegible] qualit[illegible] cognationis no[illegible] curatur [illegible], quod dictum referi & ſequit[illegible] C[illegible] *in re* [illegible] *ſunt hae.* § *dam. colum.* 1. *ad fin.* & *colum* 37. *m* [illegible] *qd.* *ſſ.d* [illegible] *in repet.* [illegible] *m* 2. *not ff de leg.* 3. ſed vltra [illegible] rorum allegue[illegible] Bal[illegible] *in conſil.* 170. *colum.* 2 & *in conſil.* 304. [illegible] 2. Fi profectò ſi gereretur cauſa matrimonii incidenter [illegible], vt pron[illegible] aretur de eius [illegible]ficacia, forte non [illegible] per retur remiſſio ad eccleſiam. C[illegible] rum peu[illegible] p[illegible] vt dicatur iud[illegible] de viribus matrimonii. Tantum quærit Mag[illegible] dominus côſuentus, vt probet adhibitum fuiſſe metum in [illegible]onfeſſione receptæ dotis, allegando metum matrimonii qui [illegible] facto di[illegible] conſtare, cuius facti quæſtio ad iudicem laicum ſine controuerſia pertinet. Et cum ſit [illegible]apax iuriſdictionis [illegible] eiuſm[illegible] factum incidens in interueniente met[illegible] confeſſione receptæ dotis [illegible] non, poterit incidenter de h[illegible] facto incidenti cognoſcere, licet oppo[illegible]nens exceptionem metus in tali confeſſione principaliter ageret, qu[illegible]d matrimonium declaretur nullum propter metum, vt confeſſio etiam reſcindatur tanquam metu extorta, non poſſet Iudex [illegible] cognoſcere, Angel *in conſil.* 16[illegible] *col. colum. fin.* ¶ Sed diceret aliquis, ſi iudex ſecularis poſſet de hac quæſtione incidenter cognoſcere, ſiet præiudicium in cauſa matrimonii, nam ſi pronunciaretur confeſſionem validam, non obſtante metu allegato, videtur inferri quod matrimonium [illegible] contractum ſit [illegible] ſine metu, & e[illegible] contra ſi pronunciaretur confeſſionem meticuloſam, & etiam matrimonium contractum ſit metu, ideo ratione præiudicii videtur, quod iudex ſecularis non poſſit cognoſcere, quia cauſa matrimonii eſt grauior. *l. per minorem. ff. de iudic.* & *l. ſi quis libertate. ff. de pet. heredit.* & quia ſententia lata in vna cauſa poſſet in alia præiudicare. *l. fundum.* & *l. fundi. ff. de* [illegible] *not. in l. edita. Cod. de edend.* pulchre Cornelius *in conſil.* 32. [illegible] 4. [illegible] *lib.* 2. Imo vbi cauſæ præiud[illegible] ad[illegible] m[illegible], dicitur procedi contra iuris [illegible]dinem, & [illegible] procedum[illegible] id poteſt appellari. Federic. de Senis *in conſ.* 71 *ſatis valeat.* Reſpondeo, quod in iſta duo ſunt diuidua, ſcilicet matrimonium & [illegible]onfeſſio. [illegible]am potuiſſet interuenire metus in [illegible] confeſſione & non in matrimonio, & econtra potuiſſet co[illegible]feſſio receptæ dotis ſine metu fieri quia pro veritate pecunia dotalis fuiſſet numerata, & [illegible] ante matrimonium metu [illegible], nonne videmus quod interdum contrahit quis matrimonium per metum, & tamen ſi pecunia pro dote numeratur [illegible] dotis confeſſio non erit meticuloſa, imo legitima, cum [illegible] fateri pecuniam quam recepit, imo, & de recepta [illegible] inſtrumentum facere. *l. diſſoluta. Cod. de condict. ſine. cauſa. l. ſunt data. Cod.* [illegible] *l. plures apoch.* *Cod. de fide inſtrument. l. ob* [illegible] *ff. de* [illegible] quæ iura ad hoc propoſitum citat Bald. *in conſ.* 230. [illegible] *Aſſ. lib.* 1. Idem etiam not. gloſ. [illegible] 2. *in princip.* [illegible] & ibi Iaſon *colum. fin. ff. ſolut. matrimon.* Socinus *in conſ.* 169. [illegible] *fin. verſ.* [illegible] *lib.* 2. Itaq; cum ſint ſeparata[illegible] non poteſt vnum præiudicare alteri, quia ex ſeparatis argui non poteſt. *l. fin. ff. de* [illegible] *l.* [illegible] *ff. de* [illegible] *l. naturaliter.* §. *nihil commune. ff. de acquirend. poſſ.* ¶ Secundo reſpondeo quod iſtud fort[illegible] proc[illegible] poſſet ſi cauſa nullitatis matrimonii eſſet in[illegible] [illegible] Eccleſiaſtico: nam tunc iudex [illegible] poſſet, [illegible] ſine inhibitione ind[illegible] [illegible] præiudicialis, Fed[illegible] 26. *in qu. dominus Camerab.* & *in conſil.* 2[illegible] *colum.* [illegible] vbi iudex Eccleſiaſt[illegible] pend[illegible] coram eo non [illegible] [illegible] & Doctor. [illegible] *colum.* 4. *poſt* [illegible] [illegible]

per [illegible] [illegible] *colum.* 3 [illegible] [illegible] 2 *ſſ. de* [illegible] dus [illegible] *in fin. C.* [illegible] cu[illegible] ſecu[illegible] [illegible] opu[illegible] da[illegible] [illegible] ad [illegible] [illegible] iurisdictionem [illegible] po, ideo di[illegible] [illegible] cum Ione [illegible] & [illegible] conſuluit, qu[illegible] [illegible] 237. *lib.* 1. & *in conſ.* 99 [illegible] Sed [illegible] iſtud dictum inter[illegible] Fed. impr[illegible] [illegible] tegrum legi & not[illegible] tantum [illegible] traditum [illegible], ſed [illegible] poteſt qu[illegible] Feder. quæ non habentur [illegible] Cum hoc, ſeq[illegible] videtur d[illegible]ſtructio illius: quod iudex [illegible] ram q[illegible] iudicialis poteſt in [illegible] ſecularis [illegible] cauſa. ¶ Ideo pro [illegible] illius diffi[illegible] randum: quod aut quæſtio præiudicialis [illegible] eccleſiaſtico eſt, [illegible], ita quod [illegible] teſt principali[illegible] nec [illegible] ad effec[illegible] iſto caſu procedat commu[illegible] opini[illegible] tio, nam ſola ratio naturalis hoc di[illegible] [illegible] iudicialis, & de ea laicus cogn[illegible] non poteſt. Aut [illegible] capax cognitionis illi[illegible] cauſæ præiudicia[illegible] [illegible]ricus produxit falſos teſtes coram non ſecular[illegible] [illegible] dex ſecularis punire ex[illegible] ordinarie Clericum falſu[illegible] committentem, ita tamen quòd ſi executio haben[illegible] [illegible] ſonam, illa reſeruetur Epiſcopo, ſi vero ſit re[illegible] bonis, faciet iudex ſecularis vel deſtringendo eius fideiuſſores quod [illegible] Cyn. *in l. nullum. C. de teſtibus* [illegible] Fede[illegible] de Senis [illegible] 93. *ſatis quod proponitur colum.* [illegible] vbi etiam [illegible] *in capit. presbyteri.* 5. *quæſtion.* 6. & quod Iudex ſecularis puni[illegible] cum coram eo delin[illegible] tradit Imo[illegible] *in conſ.* 159 *col.* [illegible] Sed poſito quod poſſit laicus punire Clericum de [illegible] teſtamen[illegible] cognoſcere, an teſtes falſum depoſu[illegible] fides habenda ſit talibus teſtib. Et iſto caſu cum poſſi[illegible] præiudicialis tractari cora laico, non poſſit iud[illegible] Eccl[illegible] inhibere. quam declarationem puto veritati & rationi [illegible] licet aliби ita decl[illegible] non inueniam. ¶ Ex qua decl[illegible] infertur, quod non bene videtur locutus Corn. *in conſil.* [illegible] *fin. lib.* 3. vbi voluit quod pendente cauſa abſolutionis [illegible] metu coram iudice Eccl[illegible]ſiaſtico, non poſſit iudex Eccleſiaſticus inhibere iudic[illegible] ſeculari, ne procedat in cauſa ſuper qu[illegible] petitur abſolutio. Nam [illegible] videtur inhiberi poſſe, ex quo [illegible] abſolutionis & præiudicialis de ea laicus cognoſcere non poteſt. ¶ Infertur etiam ex præmiſſa declaratione quod in caſu [illegible] ſtro poteſt ſine dubio iudex laicus cognoſcere ſuper iſta [illegible] ſione dotis quæ dicitur meticuloſa; quia [illegible] in caſu dot[illegible] principaliter quam incidenter iudex ſecularis eſt compe[illegible] Ancha. *in conſilio* 21. *columna fin. in* 6. *dub.* facit ad præmiſſa quod fortioribus terminis ſcribit Ruman. *in conſil.* 369. *columna* 8. *in dub.* vbi ſi clericus agat contra clericum coram iudice ſecul[illegible] licet iudex ſecularis [illegible] omnino incompetens, poteſt tamen declarare clericum ita agentem eſſe priuatum iure ſuo. ¶ Nunc videndum eſt ant[illegible] quam veniamus ad ſecundum dub[illegible] dicatur probatus iſte metus oppoſitus. in quo conclud[illegible] videtur, nihil probatum fuiſſe: nam metus vt ſup[illegible] mus, probatur ex coniecturis & præſumptionibus, puta p[illegible] nas, armorum terrorem: & de contrahente matrimoni[illegible] metum qualiter probetur, ſcribit Alexand. *in d. conſ.* [illegible] 9. *lib.* Corn *in conſil.* 41. *videtur in hac conſultatione* [illegible] *lib.* 1. Sed [illegible] ne[illegible] quidem probatum fui[illegible] Illuſtri[illegible] Ma[illegible] tam de[illegible] o, Salutiarum Marchio [illegible] [illegible] legamr me[illegible] [illegible] ob præ[illegible] [illegible] eius ceſſare videtur, quia [illegible] [illegible] quod do[illegible] nus Bo[illegible] [illegible] .March[illegible] [illegible] .Innoc. [illegible] [illegible] *quomodo* [illegible] [illegible] probar[illegible]

[illegible]

quæ dotali. C. de i. dot. [illegible] nas vel verbera [illegible] deinde [illegible]

[illegible]

Bartolus in l. [illegible] Alexandrin [illegible] Innocentius [illegible] Bonifacio [illegible] Baldus [illegible] Alexander [illegible] conſil. 146 column. penult. [illegible] Socinus in conſil. 45 [illegible] & hanc [illegible] poteſtatis neceſſitas [illegible]

[illegible] quiſitionem hered. Quintum [illegible] laudeſtine miſſet procuratos, [illegible] ſtatio in notitiam ipſius dominæ A[illegible] in l. qui in aliena. §. final ff. de acquirend. hered. Baldus [illegible] C. de [illegible] commiſſ. Angel. in conſil. 218 [illegible] column. [illegible] Alexandrin. in conſil. [illegible] libro 3 Decius in l. omnibus [illegible] ff. de regul. iur. ¶ Sed [illegible] per hoc [illegible] proteſtatione non facio fund[illegible] videtur nec [illegible] proteſt[illegible] dum [illegible] alias probetur de metu. Alexandrin in d. l. qui in aliena. §. final ff. de acquirend. hereditat. Decius in d. [illegible] in omnibus numer. 10. ff. de regulis iuris. [illegible] column. 3 de

5 appell. & in conſil. 156. column. 2 ad fin. Sic [illegible] † in impedit[illegible] videtur neceſſaria proteſtatio, dum [illegible] conſtet de impedimento. Alexandrin. in conſil. 91 column. penultim. libro 1. [illegible] quod [illegible] column. 3 ff. de operis novi nunc. [illegible] ad dictum column. [illegible] fin. ff. de verborum oblig. & in l. properandum. §. fin autem vtraque. Cod. de iudic. Gozadin in conſil. 66 column. 3. & hanc opinionem [illegible] ſequi, & in caſibus in quibus Doct. videntur requirere proteſtationem, illud videtur procedere, vel quando agitur [illegible] do impedimento [illegible] proteſtationem, puta quod actor fuerit impeditus cauſam proſequi [illegible] terminum [illegible] non probetur de impedimento [illegible], puta quod fuerit abſens aut infirmus, tamdiu non poteſt quod ſteterit per [illegible] & quod actor fuerit impeditus [illegible] diligentiam [illegible] ſæpius [illegible] & proteſtando [illegible] cem, vel quando agitur de probando metum ex ſola proteſtatione, puta quia proteſtatur quis in præſentia eius cum quo

[illegible] metus [illegible] quod [illegible] peditus [illegible]

[illegible] 6

[illegible] probatur per [illegible]

[illegible] Alexandrin [illegible] procedere [illegible]

[illegible] terminum [illegible] cum [illegible] tu & [illegible] Ratio [illegible] cauſam metum [illegible] te cum metum [illegible] ab alio. ¶ Sed hic etiam [illegible] quod vbi infertur metus [illegible] eſſe datam [illegible] contractus. Paulus de Caſtr. & Alexand. in l. penult. [illegible] quod metus 7 cauſ. Decius in conſil. 4 [illegible] column. Ideo dicendum eſt [illegible] dum Alexandrin. in [illegible] conſil. 21. ſolum procedere quando ageretur de præiudicio tertii, qua ipſe eſſet [illegible] non ſentit commodum contractus. ¶ [illegible] allegari non poteſt, quia non ſufficit probare [illegible] probetur quod [illegible] adinſe [illegible] cum exceptione. §. [illegible] per illum text. ff. quod metus cauſ. vbi [illegible] inſtruit a libelli [illegible] procedere, quando [illegible] litas ex metu [illegible] tempi [illegible] metu [illegible] Cod. quod metus [illegible] Alexandrin in d. [illegible] Cod. [illegible] vt ſupra [illegible] differentia [illegible], an vere probetur [illegible] metus [illegible] an ſolo [illegible] tur metus [illegible] ¶ Ex prædictis infertur ex [illegible] non probat quod deducit, etiam [illegible] do [illegible] detur. [illegible]

[illegible]

quando [illegible] quæ nihil [illegible] ex parte [illegible] in 2. not. extra. de off. dele [illegible] & retus inde [illegible] vide [illegible] & ipsius [illegible] ff. pro [illegible] 10. a fortiori in princ. e. l. quanto magis ff. de verbor. facit dict. in Innoc. in capitul. 1. de ben. [illegible] de qui [illegible] Ab. in capit. nisi essent de præben. arguendo a fortiori. Quinimo Arch. diacon. & Ioann. Andr. in capit. 1. de pact. lib. 6. voluerunt quod ubi intervenerit authoritas Principis, non potest allegari [illegible] Alexan. in consil. 14. [illegible] Baldus in repet. 395. pro domino Danaldo, column. 1. ad fin. [illegible] plenus. Ad idem
9 qui dic [illegible] in consil. 36. column. [illegible] lib. 2. præsentia principis [illegible] in [illegible] deceptionis, & [illegible] in donatione [illegible] principe. Ad idem adduc Bal. [illegible] Col. de prædiis Imper. offer. vbi [illegible] potest ubi est princeps, quod Bald. [illegible] & sequitur Iason in consil. 72 column. 1. in fin. lib. 1. Ad idem adde Socin. in l. si mihi & tibi [illegible] legatum column. penult. in fin. versicul. 7. [illegible] ff. de leg. 1. vbi quod coram principe præsumitur cessare omnis suspicio & machinatio, alibi scribit Calcan. in consil. 2. column. fin. quod ad comparendum coram principe metus allegari non potest, nisi in loco [illegible] exercitus aut furor populi. ¶ Venio ad secundum dubium, in quo videtur concludendum, oportere magnificum Senatum Marchionalem pronunciare super testi[illegible] etiam si es [illegible] matrimonium meticulosi esset [illegible] a veritatis præiudicium quia propter causam [illegible] non est impe[illegible]

[illegible]

[illegible] Senatus Marchionalis [illegible] ad restitutionem dotium [illegible] nullitas, non sequitur [illegible] repugnantia [illegible] matrimonium [illegible] causa [illegible] matrimonium [illegible] Magnifici [illegible] argumentari [illegible] Senatus [illegible] rationem [illegible] nostro, sed [illegible] diversitate [illegible] fin. ff. de minor. l. fin. ff. de solum. [illegible] materia arguendi [illegible] [illegible] Socinus [illegible] Deus

[illegible]

[illegible]

SVMMARIA.

[illegible]

CONSILIVM CCIV

In materia Contumacia.

DIVISO ſubſidio ex conde poſt [illegible] to. Decem principali [illegible] communi ſt [illegible] nam dilationem [illegible] quam pro [illegible] ſponſum am [illegible] im pede poſt [illegible] tum pede poſit [illegible]

[illegible]

[illegible] Alexandrinus [illegible]

[illegible]

[illegible] ... prop[illegible] quod [illegible] ... *fi[illegible] C. l. cum enim* [illegible] ... tu [illegible] per [illegible] tempus [illegible] ... *argumentum quod not.* Bart. [illegible] ... *in consil. 49. column.* [illegible] ... *de fide instrum.* ubi [illegible] approb[illegible] ... c[illegible] complu[illegible] ... p[illegible] [illegible] approbat [illegible] confirma[illegible] & vir[illegible] facta [illegible] quod [illegible] singulari [illegible] ... *column.* [illegible] firmat [illegible] ... col[illegible] ¶ [illegible] primo, cum statto[illegible] tatto seu de[illegible] ... fuerit in continenti post [illegible] ... videtur præ[illegible] [illegible] *in l. Pomponius in § 2. ... ff. de procur.* ... quæ [illegible] ... *C. de* [illegible] ... *non* [illegible] *§ morte column.* [illegible] *ff. de oper. non nunc.* nec [illegible] tractatur de purgat[illegible] ... sed dicitur actus factus intra[illegible] [illegible], propterea quod impletur [illegible] continenti & virtute [illegible] & retrotrahitionis. Octavo [illegible] si heres non implens voluntatem testatoris privatur ipso iure heredi[illegible] tate *aut. l. hoc amplius. C. de fideicom.* ubi Bal. *column.* [illegible] & Iaf. *column. 3. ad fi. in 2. not.* Paul. de Castr. *in consil. 159. Omnes difficultates column. 1. circa med. lib. 1.* & tamen non committitur pœna quando ex contrave[illegible]tione heredis in effectu non læditur voluntas testatoris, quic[illegible]quid loquantur ipsius testatoris verba, & heres de post[illegible] implen[illegible]te. Ang. *in consil. 16[illegible]. Super puncto supradicto column. 2.* Dec. *in consil.* [illegible] *2. in prin. in consil. 484. ad fi. quod fit repetitum in consil. 62.* Sim. licet non com[illegible]mittitur pœna testato[illegible] quando ex contraventione heredis nullum sequitur interesse, nec impeditur executio voluntatis testatoris, & cessat causa propter quam apposita fuit pœna à testatore. Anch. *in consil.* [illegible] *pro clarioris* [illegible] ... do arguendo de ultimis voluntatibus [illegible] quod [illegible] ... etenim inter[illegible]
4 pret[illegible] ... admodum quo [illegible] interpretatur voluntas te[illegible]statori[illegible] ... *l. 1. C. de his quib. ut indig.* [illegible] *in l. cognitionem ff. de* [illegible] ... Dec. [illegible] *in consil. 90. col. 1.* [illegible] ... *ff. de* [illegible] ... *§ morte col. 24. ff. de ope. non.* [illegible] *col. 12. post pr.* [illegible] *ff. de verb. obl.* ex contraventione eius qui respon[illegible]sione non [illegible] in ped[illegible] positionum [illegible] ... offenditur voluntas [illegible] quæ fuit ut lites coarctarentur seu abbrevia[illegible]rentur, & [illegible] cont[illegible] ... reddere [illegible] ... siquidem ex mora de[illegible] respon[illegible] ... processus [illegible] habatur neque [illegible] ... Rursus cont[illegible] ... ponit dolum præ[illegible]sumptum Bart. [illegible] ... *ff. de* [illegible] ... quælibet [illegible] ... contumacia, [illegible] tamen [illegible] ... Alex. *in consil.* [illegible] ... *lib. 1.* Curt. Se[illegible] ... *in consil. 33. column. 2. circa* [illegible] ... Ar[illegible] *in consil. 80.* [illegible] ... talis causa iusta sed po[illegible] ... nisi p[illegible] ...

[illegible] ... *volum.* [illegible] ... ¶ [illegible] ... *quo* [illegible] ... *consil. 41.* [illegible] ... Modern[illegible] ... *consil. 4. column. 8.* [illegible] ... *de legatis.* [illegible] ¶ [illegible] ... *de sent.* [illegible] ... Iason *in l.* [illegible] ... & verba statuti debent [illegible] ... Decius *in d.* [illegible] ... videtur oportere in dubio Iudicem [illegible] ... quam minus præiudicia[illegible] ... Paul. de Castr. [illegible] ... Bald. *in consil. 91. proponitur quod* [illegible] ... Alb[illegible] ... Dec. [illegible] 448 [illegible] ... Princeps [illegible] ... confessio [illegible] ... termini [illegible] ... 15[illegible]. Aymo Cravetta ex Saviliano I. V. D.

SUMMARIA.

1 Substitutus impugnans testamentum [illegible] ... fundare [illegible] ...
2 Negans [illegible] ...
3 [illegible] ...
4 [illegible] ...
5 [illegible] ...
6 [illegible] appellasse, non potest opp[illegible] ... [illegible] fugui.

CONSILIUM CCV.

In causa Petri [illegible] *chi.*

D[illegible] ... [illegible]

ſimpliciter teſtamentum Andreæ Cochi poſſit iuuari ex fidei-
commiſſo relicto in teſtamento, quia in ſpecie non negauit fi-
deicommiſſum, & illa impugnatio teſtamenti poteſt intelligi
reſpectu inſtitutionis, & id non trahitur ad ſubſtitutionem.
1 † Ideo ſubſtitutus impugnans teſtamentum reſpectu inſtitu-
tionis, poteſt ex eo ſe fundare reſpectu ſubſtitutionis. Baldus *in*
l. ſi filius per illum tex. ff. de hered. inſtituend. Alexand. *in l. inter cætera. ff. de*
liberis & poſthumis. & in l. ex facto §. Lucius ff. de vulgarib. Decius *in l.* *to-*
tum penult. in fin. ff. ſi cert. petat. in l. cum proponas. 2. colum. fin. C. de pact. in l.
2. in 1. notab. C. de inſtitut. & in conſil. 31 in fine. At hic punctualiter &
in ſpecie negauit Petrus Cochi fideicommiſſum, ergo ex eo iu-
uari non poteſt. ¶ Illud tamen non omitto dum Iaſ. *in dicto §. no-*
bilcommune. colum. 16 allegat Bart. cum ita præmiſſa. *in l. decem. in fine.*
2 *ff. de verbor. obligat.* vbi † quod negans ſolennitatem actus non
poteſt ex facto ſe iuuare, nec aliter Iaſon diſſoluit more ſuo,
nam illud eſt, quia qui negat ſolennitatē actus, negat ipſum
actum cum omnibus ſuis qualitatibus, ex quo defectus ſolen-
nitatis ad omnia pertinet, & omnia omnino vitiat, & annullat,
& ſic perinde eſt ac ſi in ſpecie negant omnia & ſingola. ¶ Se-
cundo ex negatione fideicommiſſi cenſetur repudiatum fidei-
commiſſum, præcedentibus tot dilationibus ad reſponden-
dum & deliberandum, ex quibus arguitur quod non per erro-
rem ita fuit reſponſum *ita notatur in l. quis ſe patri.* vbi Decius *colum.*
5. poſt medium. verſic. pro opinione tamen Angel. C. vnde lib. pulchre Soc.
in conſ. 45. In cauſa agitata inter Hieron. lib. 3. Etenim quoties datur ali-
cui tempus intra quod aliquid obligatur perquirere, præſumi-
tur in eo ſcientia, & quod ſciente ita reſponderit. Socinus *in*
conſil. 194. colum. 2. ad fin. verſic. quarta reſpon. lib. 2. ¶ Secundo ſtanti
bus tot dilationibus ad reſpondendum tenebatur inquirere &
diligenter percunctari, an eſſet relictum fideicommiſſum vel
non, quod ſi non fecit, poteſt allegare ignorantiam fideicom-
miſſi *cap. penult.* vbi Abbas *de regulis iuris. gloſſ. in cap. ianotum. in verſic.*
ignorantia de elect. cum ſimil. quia Decius ſcribit *in conſil. 160. col. fin.*
& idem Decius *in conſil. 135. ad fin. in regul. qui cum alio. per illum text. ff.*
de regulis iuris. Iaſon *in l. error. colum. 6 verſic. limita tribus modis.* *de iuris*
& facti ignorant. clarius in l. quis in aliena. §. 1. colum. 3. verſic. Item cum hic. ff.
de acquir. hered. in l. quamdiu. colum. 2 verſic. ſic ergo ex prædictis C. qui ad-
mitti. & in l. 1. colum. fin. verſic. principaliter ¶ de condit. indeb. Ripa. *lib. 2. de*
præſcript. cap. 12. colum. 2 ante medium. ¶ Hic tamen aduertendum,
quod non obſtantibus dilationibus ad reſpondendum, ſi quis
allegaret per errorem reſpondiſſe, audiretur probato errore.
Roman. *in conſil. 391 Propoſita col. 2* quicquid aliter voluerit idē
Rum. ſibi contrarius *in conſil. 3. col. 2.* Debet tamen probari er-
ror in ſpecie ſpecificando cauſam erroneam. Curtius Sen. *in*
conſil. 56. colum. 5. in fin. alleg. Bald. *in l. error. colum. penult. C. de iuris &*
facti ignor. ¶ Tertio cum bona Andreæ Cochi non pertinerent ad
3 Petrum committentem ex alia cauſa, quam ex titulo fideicom-
miſſi, præſumitur quod poſſideret ex ea cauſa, quia poſſeſſio
præſumitur habita ex titulo præcedenti *lib. 2. C. de acquir. poſſeſſ. l.*
quædam mulier. ff. de rei vendic. Bald. *in conſil. 89. Dominus Thomas Aſma-*
colum. 1. poſt medium. libr. 1. & in conſil. 171. proponitur quod per communem.
colum. 2. poſt medium. libr. 5. pulchre Socin. *in conſ. 15. colum. fin. libr. 4.*
Cornel. *in conſil. 56. colum. 2. ad fin. & in conſil. 221 colum. 2. circa princ.*
libr. 3. Decius *in conſil. 279. ad fin. cum ſimil.* Igitur præſumptio eſt,
quod ſciuerit cauſam ſuæ poſſeſſionis, & ſic titulum fideicom-
miſſi, alias præſumeretur delictum, id eſt, quod poſſeſſionem
illorum bonorum iniurioſe occupauerit. *contra l. merito. ff. pro ſo-*
cio. nempe ſpeciale eſt in minore vt præſumatur ignorantia eius ſi-
bi competente. *l. regula. in princ. ff. de iur. & fact. ignor.* ergo in maiore
ſecus præſumendum eſt. *l. ius ſingulare. & l. quod vero ff. de legib. l. 1. in*
fin. ff. ad munic. ¶ Quarto, omiſſo titulo fideicommiſſi cedebat
hereditatem pertinere ad filiam Andreæ ſaltem iuris præſum-
ptione, ideo niſi ſciuiſſet ius fideicommiſſi, præſumeretur poſ-
ſediſſe mala fide. *l. fin. Cod. vnde vi.* & ibi Bartol. *circa fin. & in l. illud.*
ff. de petit. hered. cum ſimilib. quæ Dec. not. *in conſil. 272. colum. 3. ad fin.*
facit quod ſcribit Cornel. *in conſil. 22. colum. 5. ad fin. lib. 1.* vbi quan-
do quis aliquid ſoluit quod ſoluere tenebatur, niſi ratione certi
contractus, præſumitur habuiſſe notitiam de illo contractu eo-
dem modo cum iſte Petrus non poſſet tenere iſta bona niſi ra-
tione fideicommiſſi prædicti, dicendum eſt notitiam eum ha-
4 buiſſe de ipſo fideicommiſſo. ¶ Quinto † præſumitur ſcientia
fideicommiſſi in iſto Petro, nam accepit poſſeſſionē bonorum
tanquam heres teſtamentarius, quia ab inteſtato excludebatur
à filia, ſed heres poſt aditam hereditatem præſumitur habuiſſe
notitiam teſtamenti. Bart. & Doct. *in l. qui Romæ. §. duo fratres. ff. de*
verbor. obligat. not. in l. ex eo qui verſic. quid ſi ſtipulatus. vbi Modernus *ff.*
ſi certum petatur. igitur præſumitur quod ſciret an eſſet heres electus vel per fideicommiſſum, maxime cum ſit extraneus, licet
etiam ſui idem voluit Baldus *in conſil. 295. Petrus Lambardi colum.*
1. libro 3. Paulus de Caſtro *in conſilio 94. clarum eſt in textu column. 1. li-*
bro . Decius *in dict. verſicul. quod ſtipulatum. in regul. qui in alterius. ff. de*
regul. iur. & in conſilio 287. columna 7 ad fin. Socinus *in conſilio 5. co-*
lumna penult. ad fin. & columna ſequenti. libro 1. ¶ Sexto arguitur ſcien-
tia, quia nunc producit ipſum teſtamentum, ideo ſi nunc habet
ad ſe, illud vtique præſumitur habuiſſe. Anchar. *in conſil. 170. prin-*
cipaliter contra iſtos *columna 2* Aret. *in conſil 1, ad fin.* ¶ Se-
ptimo etiam ſcientia fideicommiſſi nimiſq; ſplēdide probatur
ex aſſertione & confeſſione ipſius Petri nunc illud allegantis, ſi
quidem ex præſenti præſumitur in præteritum. *l. non eſt neceſſe. ff.*
de probat. l. quicumq; C. de apo. pub. libro 10. cum ſimil. maxime, quia
qualitas ſcientiæ concordat cum primo ſtatu præterito tempo-
ris: nam ſine titulo fideicommiſſi aduerſarius obtinere non po-
terat iſta bona, ob id præſumitur quod tempore quo cœpit poſ-
ſidere, ſciuerit cauſam fideicommiſſi. ex his quæ ſcribit Alexan.
in conſilio 16. columna 1. in conſ. 75. columna fin & in conſil. 92. columna 5.
libro 5. & in conſilio 196. columna *. libro 7.* ¶ Iſta autem fideicom-
miſſi negatio præſumitur doloſa ex longo interuallo temporis
conceſſo ad reſpondendum, per quod certum eſſe oportebat
aduerſarium de fideicommiſſo. *l. ſi quis affirmauerit. ff. de dolo.* De-
cius *in conſil. 143. column. penultim. in fin.* & quia negauit illud quod
erat concedendum. Alexand. *in conſil. 131. colum. 3. poſt med. verſicul.*
probatur etiam de iniquitate. lib. 1. nam ratione mendacii ſemper præ-
ſumitur dolus. Bartol. *in l. dolum. C. de dolo. per d. l. ſi quis affirmauerit.*
Alexand. *in conſil. 41. colum. 3. ad fin. libr. 3. in conſil. 52. column. fin. lib. 6.*
Socinus *in conſil. 20. column 4. libr. 3. in conſ. 46. col. 4. lib. 1. & in conſ.*
246. column. *circa med. libr. 2.* qui dolus omnino præſumitur da-
ta ſcientia fideicommiſſi, quod pars confeſſa eſt. Alexandrin *in*
conſ. 91. column *ad fin. libr. 6.* ergo ratione mendacii & negatio-
nis circa fideicommiſſum, videtur priuandus commodo fidei-
commiſſi, ſicut dicitur de eo qui negat ſe appellaſſe, nam ap-
pellationem proſequi non poteſt. Pra poſit. *in c. ex ratione col.* *. de*
appell. Poſſem cumulare infinita ſimilia quibus adnotantur pœ-
næ negantibus iniunctæ, de quibus per Iaſon. *in l. ſi vendam. col. 8. ff.*
verbor. obligat. in l. 1. colum. 1. Cod. de error. calcul. in l. quæſtionem. Cod. de fidei-
commiſſ. latiſſime in l. ſunt autem § 7 ff. de re iudic. & alibi ſæpe. Poſtre-
mo ſi † vellet contendere ſe ita negaſſe per errorem, tenetur ipſum 5
errorem probare, vt ſupra dictum eſt. Et tradit Bart. *in l. non fate-*
tur. colum. vltima. ff. de confeſſ. Cornel. *in conſ. 250. colum. fin. libr. 4.* Et
non ſolum debet probari error in facto, ſed etiam error iuris.
Bartol. & Angel. *in l. ſed & ſi lege §. ſi ære. ff. de petit. hered.* Cornel. *in*
conſil. 17. column. 3 circa fin. in conſil. 126. colum. penult. ad fin. libro 1. & *in*
conſil. 33. colum. 10. ad fin. libro 4. Ad cuius erroris probationem
neceſſe eſſet eum oſtendere rem aliter habere, id eſt, quod poſ-
ſedit iſta bona ex alio titulo quam ex titulo fideicommiſſi. Bar-
tulus *in l. ſed ſi me inuitum. ff. de condit. indeb.* Baldus *in conſil. 99. in cauſa*
nobilium. libr. 1. Iaſon *in l. ſi poſt diuiſionem. in ſecunda not. Cod. de iur. &*
facti ignorantia. Item eſſet probandum quod nunc demum ha-
buit notitiam illius teſtamenti, & licet probari liceat iuramen-
to allegantis, nunc tantum habuiſſe notitiam de aliquo inſtru-
mento. *iuxta not. in cap. paſtoralis. de except. & in l. admonendi ff. de iureiu-*
rando. tamen in caſu iſto non videtur ſtandum illi iuramento,
quia pars aduerſa habet præſumptionem iuris contra ſe, ex his
quæ ſupra oſtendimus. Alexand. *in l. inter omnes. §. recte. ff. de furtis.*
Iaſon *in §. ſed iſta. colum. 18. ad fin. Inſtit. de action. in l. pro herede. in prin-*
cip. column. penult. ad finem de acquir. heredit. cum ſimilibus. ¶ Et ſi dica-
tur, licet primo negauerit teſtamentum & fideicommiſſum,
tamen illud poſtea producendo cenſetur reuocare illam nega-
tionem. quod permiſſum eſt, ſecundum Bart. *in dict. l. poſt lega-*
tum. column. fin ff. de his quibus vt indign. Alexand. *in conſil 112. libr. 5. &*
in conſil. 91. colum. 2 ad fin. libro 6. Socinus *in conſ. 158. colu. 2. ad finem.*
verſic. nec obſtat ſi dicatur. libro 2. Cornel. *in conſ 229. poſt redditum con-*
ſilium colum. 2 libr. 2. Reſpondeo dupliciter, primo, quod iſtud
procedit quādo quis negaſſet, ſeu impugnaſſet aliquid per er-
rorem, patet, quia Doctores dicunt quod poteſt negationem
reuocare, & dicunt quod negauit per errorem, ſed hic Petrus
Cochi negauit doloſe & ſcienter, vt ſupra probauimus, ideo
non poteſt reuocare quod ſemel doloſe fecit, quia poſt delictum
conſummatum non admittitur pœnitentia *l. qui ea. ff. de furtis* *no-*

tatur in l. quamuis. ff. de in integ. restit. alias enim [illegible] materia d[illegible] l[illegible]quendi & fraudes ac d[illegible] lo[illegible] committend[illegible] quod eſſe non debet *l. inſtitutio ff. de rei vend.* Secundo reſpondeo [illegible] polito quod [illegible] ter negans poſſit negationem reuocare, [illegible] quod iſta pœnitentia & reuocatio neg[illegible]tionis non deberet admitti: quia agens acceptauit [illegible] responſionem negatiuam, ex qua accept[illegible] actione fuit ei ius quæſ[illegible]um, [illegible] in terminis reſpondet Cornel. *in conſil. 175. circa fin. lib. 4.* [illegible] Roman. *in l. 1. §. ſi quis ſimpliciter colum. 4. ff. de verb. oblig.* ¶ Tertio reſpondeo, quod iſta reuocatio debebat fieri in con[illegible], aut ſaltem intra modicum tempus Bald. *in conſil. 54. Statuto ſen. col. 3. verſic. nunc veniendum eſt ad deciſionem lib. 3.* Roman. *in conſil. 55. circa fin. & in conſil. 70. colum. pen. verſic. 2. principaliter.* & iſtud modicum [illegible]mpus debet intelligi ante litem conteſtatam *l. edictio §. neque ff. de noxal. gloſſ. in §. item mixta Inſtit. de act. tum ſimul quæ l. ſi congerit in Lectum qui. in prin. colum. 3 ff. de* [illegible] ſed iſta negans obdurauit eius negationem propre tempus ſententiæ, donec vidit ſe litẽ omnino perditurum, optime [illegible] quod 6 ſcribit Præpoſitus *in cap. ex ratione colum. 7 in prin. de* [illegible] ubi, qui ſemel negauit ſe appellaſſe, non poteſt appe[illegible] faten, & eam proſequi, imo negans ſimi[illegible] eſt fraudator, adeo parata ſunt negare bona eſſe hereditaria, & ea ſubtrahere *l. hereditatum. §. fin. ff. ad leg. Falcid.* Bald *in conſil. 34. Statuto ſen. colum. 2. poſt med. lib. 3.* Taurini 9 Septembr. M. D. XXXIIII.

SVMMARIA.

1 *Patri permittitur diſponere pro arbitrio de bonis ſuis, modo relinquat legitimam filiis.*
2 *Heredis in paſto non datur in totum nec in partem.*
3 *Diſpoſitio de primogenitis videtur fauore ab illa edita principaliter ad ſeruandos familias & earum dignitatem.*
4 *Legitima* [illegible] *transferſalis niſi inſtituta turpe perſona.*
5 *Feudum non* [illegible] *in generali diſpoſitione, qua prohibetur alienare.*
6 *Feudum comprehenditur in generali diſpoſitione.*
7 *Diſpoſitio vniuerſalis affirmatiua reſtringitur ad caſus habentes eandem rationem, & non diuerſas.*
8 *Dictio quoquo modo, licet ſit vniuerſalis, tamen reſtringetur ad modos proportionabiles materiæ idonea in qua apponitur.*

CONSILIVM CCLVI.

In cauſa teſtamenti Ludouici Montaphia.

DIVINO ſubſidio ex corde poſtulato. In caſu tranſmiſſo agam breuibus, & deciſiue loquar, quoniam agitur inter fratres amicos veritatem duntaxat quærentes. & præſuppono 1 quod † permittitur patri diſponere pro arbitrio de bonis ſuis, modo relinquat filiis *l. parentibus.* vbi Bald. *C. de inoffic. teſt. l. hac edictali. §. 1. C. de ſecund. nupt. §. ſi vero auth. de nupt.* quem text. ad hoc citat Baldus *in conſil. 334. Punctus pater diligens filium lib. 3.* quod maxime ob inet quando ex cauſa pater ita agit, cum etiam diſpoſitio teſtatoris efficax fiat ſine cauſa, etiam ſi per iracundiam quid diſponat. *l. in ipſius.* vbi Baldus *c. famil. ercis.* Planc magn. dom. Ludouicus Mõtaphia ad eum modum teſtatus eſt ratione primogenituræ, animaduertens familiarum ſplendorem ſordeſcere in tot diuiſionibus. nihil enim tam magnum quod per diuiſionem non efficiatur paruum, *in auth. de trien. & ſemiſ. poſt princ. c. maiorib. & c. dilecto. de præbend.* nihil eſt adeo magnum quod ſi in plures diuidatur, non fiat quaſi nihil. *gloſſ. in auth. vt iudic. ſine quoquo ſuffrag. §. 1 in verb. ſufficiens. Ad idem text. in cap. de feudo mar.* vbi quod dignitas & dominium per diuiſionem ad nihilum reducitur, nam virtus vnita fortius eſt ſecundum philoſophum. Qua ratione feuda dignitatum nõ diuiduntur, cuiuſmodi ſunt. Ducatus, Marchionatus, & Comitatus, niſi aliter habeat conſuetudo *cap. imperialem. § præterea de prohib. alien. feud. per Feder.* imo adeo ad alia feuda dignitatem in ſe non habentia ſoli primogeniti nuitantur apud Francos. Iaſ. *in tract.* [illegible] *feud. colum.* [illegible] *verſic. circa quintam* [illegible] allegat Iac. de Belui & Aluaro. ¶ Similiter, licet pactum [illegible] ſuccedendo nihil valeat tanquam inimica in bonis moribus per quod dat[illegible] materia delinquendi *l. fin. C. de pa*[illegible] *l. ſtipulatio hoc modo concepta. vbi not. ff. de ver. oblig.* tamen valet e[illegible] huiuſmodi pactum fauore primogenituræ [illegible] permittitur [illegible] contrahentibus matrimonium paciſ[illegible], vt primogenitus ſuccedat in talibus bo[illegible] Guido Pa[illegible] *in queſt.* [illegible] *Pactum ſic* [illegible] Decius *in conſil. 22. colum. 1 ver.* [illegible] *ſecundo pa*[illegible] ¶ Sed cer[illegible] [illegible]

c[illegible] matrimonii & primogenituræ [illegible]
[illegible] C[illegible]
[illegible] *in conſil.* [illegible]
m[illegible] monii [illegible] primogenituræ [illegible]
ta patri [illegible] credi [illegible] 2
[illegible] ſequitur De[illegible] *collat. in conſil. 84.* [illegible] *colum. 2. poſt med.* ¶ [illegible] illud prim[illegible] dignitatib[illegible] S[illegible] *in conſ. 4*[illegible] quand[illegible] præiu[illegible] & paterno. [illegible] Curt. *iunior* [illegible] *in quarta parte queſt. penult. col. 5* [illegible] eodem [illegible] licitum patri [illegible] pernicie[illegible] & damnum primogeniti [illegible] *d. ſpec. 47 lib.* [illegible] Alex. *in conſ. 87 colu.* [illegible] *ff. de leg.* [illegible] diſpoſitio de primogenitis [illegible] dita principaliter ad ſeruan[illegible] familias & [illegible] Socin. *in d. conſ.* [illegible] *colum. 1. ad pr.* [illegible] non vocatur ad totum, [illegible] A[illegible] *128 colum. 4.* [illegible] *med. verſ. ad* [illegible] genituræ dictum [illegible] feudum primogenito, [illegible] ſponere. Paul. de Caſt. *in conſ. 189. In caſu quam magn.* [illegible] fert & ſequitur Fel. *pruden* [illegible] *vide etiam extra. de offic. deleg.* vbi [illegible] non debetur legiti[illegible] de bonis primogenituræ: iſtud voluit Bal. *in d. conſ. 198.* [illegible] *lib. 3.* quando contulit[illegible], licet ſub al[illegible] & [illegible] Campegius *inter conſil. Roma. in conſ.* [illegible] *col. 7. in 4. dubio* ¶ [illegible] illud dictum ita diſtin[illegible] quare contrarium voluit idem Bal[illegible] contrariis [illegible] *colum. 4 ver. quare patrem pater de prob.* [illegible] *ff. de rei vind.* [illegible] *C. de ſacroſan. eccleſ.* [illegible] *§.* [illegible] *ff. de leg. 1.* [illegible] refert & ſequitur C[illegible] *in conſ. 3*[illegible] *col. 4.* [illegible] vbi [illegible] quod [illegible] poſſit procedere opin. Paul. de Caſt. *in d. conſ.* [illegible] idem Cor[illegible] *in conſ. 199. col. 17. & ſeq. in 2. dubio. lib.* [illegible] *281.* [illegible] Alex. *in conſ. 18.* [illegible] *fin. lib. 5.* Dec. *in conſ. 18.* [illegible] tamen allegat pro ſe Paul. de Caſt. *in d. conſ. 179.* vbi Paul. deter[illegible] cont[illegible], licet pri[illegible] arguat pro contraria opin. tamen in caſu noſtro op[illegible] Paul. de Caſt. ſine dubio videtur proce[illegible] quia feuda de quibus [illegible] ut ſunt hereditaria [illegible] quæ admitti quis non poteſt niſi ſit heres, ſed tanqua[illegible] non poteſt [illegible] facto defuncti pro parte [illegible] heres, [illegible] faciat inuentarium, quod nõ pro[illegible] heredi [illegible]. Alexand. *in conſil. 13 colum. 3. in conſil.* [illegible] *in conſil. 9 colum. 4. & in conſil. 28. colum. fin. lib. 5.* & hic ſine dubio [illegible] procedere Campegius *in decimoquinto* [illegible] *in 4 d.* [illegible] *inter con.* [illegible] *Roma.* [illegible] pro indubitato habet Iaſon *2 colum.* [illegible] *de iure emphyt.* † Ex quibus 7 apparet minus bene [illegible] *colum. penultima ad fin. verſic. non obſtat ſucceſſione* [illegible] quod dictus Alexan. loquitur in feudo heredi[illegible] quod [illegible] extraneo tranſit: nam ſi videatur Alexandr. [illegible] Decius [illegible] allegat *in dicto conſil 18* loquitur [illegible] feudo hered[illegible] quod conceditur pro ſe & [illegible] ſed pro ſe & heredibus quod ad extraneos non [illegible] Alexandrum *in conſil. 10. lib. 3. in d. conſil. 19. in conſil. 26 & in d. conſil. 28 lib. 5.* Decius *in conſil. 208 colum. 2. poſt medium & colum. 3. ad fin. in conſil. 399 colum. 3. ad fin. & in conſil. 345.* [illegible] *2. circa medium.* vbi [illegible] ita eſſe [illegible] communem doctrinam po[illegible] Decius allegare pro [illegible] opin. Cornel. *in conſil. 199. in* [illegible] *lib. 2.* nam ibi erat feudum hereditarium, [illegible] Curt. quod pater non poſ[illegible] præiudicare [illegible], ſed ex præmiſſis appa[illegible] illud non eſſe verum, & confunditur ratione inconuincibili [illegible] qua fundatur contraria & verior opin. nam licet feu[illegible] modi non tranſeat ad heredes extraneos [illegible] tamen [illegible] tum [illegible] in feudo ſuccedere, debeat eſſe [illegible] heres, [illegible] ergo [illegible] defuncti impugnare non [illegible] hoc [illegible] ſeu inclu[illegible] [illegible] bileq[illegible] pliciter opin. dicti A[illegible] ¶ S[illegible] domini Montaphia ad [illegible] dipo[illegible] in præ[illegible] [illegible] multo maxim[illegible] erat magnifico

4 dom. Anton. eius fratri, in præiudicium tranſuerſ[illegible] lium, quibus bona non ita de[illegible]b[illegible]tur. patet, ¶ quia non deb[illegible] ut le[illegible]tima tranſire [illegible] libu[illegible], niſi inſtituta turpi perſona. *l. fratres vterini. ·C. de inoffic. teſtament.* ¶ Quibus ita præſuppoſitis, & plene v[illegible]o comprobatis, [illegible]idendum eſt quantum [illegible]tum ſint ex t[illegible]ſtamentis dominorum Ludouic[illegible] & Anton[illegible], magnifici dum[illegible]or[illegible]gius & Phil[illegible]bertus, qui ad[illegible]t inter viuos agunt, aliis iam de[illegible]nctis. Principio dominus Geor[illegible]us obtinebit omnia bo[illegible]a quæ ſunt ad fines C[illegible]rignani, vt [illegible] allodia iure prælegat[illegible] [illegible] teſtamento patris, in quibu[illegible] [illegible]lodialibus non eſt difficultas ſecundum Paul. de Caſtr. *in dicto conſil.* 79. & Decium *in dicto conſi[illegible]*. Alia autem bona allodialia alibi ſita ex æquo pertinent ad ambos fratres ſuperſtites, id eſt, Georgium & Philibertum. ita de bonis patris [illegible] licet domini Ludouici dominus G[illegible]orgius non conſequitur amplius altero fratre, niſi bona allodialia Ca[illegible]rignani propter codicillos, quib. fuit diminutum prælegatum in teſtamento [illegible]gius derelict[illegible] Portione autem fratris præmortuorum, ea quo etiam fuerunt delatę ad fratres ſup[illegible]ſtites. ſiquidem vt proponitur, ita cauerunt in eoru[illegible] teſta[illegible] quæ approbauerunt expreſſim ipſi domini Georgius & Philibertus vt dicitur. ¶ Secundo dominus Georgius vendicat dimidiam partem bo[illegible]orũ quæ pert[illegible]ebant a[illegible] dominum Antonium patruum in finibus Carignani, quorũ & eſt vſufructuarius magnificus dominus Præpoſitus frater teſtatoris, [illegible] autem pars dimidiæ parti Bonorum domini Antonii æquali[illegible] diuiditur inter ipſos dominos Georgium & Philibertum. ¶ Sed hic dubitatur, an teſtamenta magnificorum dominorum Ludouici & Antonii pertineant etiam ad bona feudalia quod illa comprehendant. Breuiter puto concludendum quod ſic, quia feu[illegible]da de quibus agitur ſunt vere hereditaria, nam vt colligere li[illegible]cuit, fuerunt conceſſa accipienti pro ſe & ſucceſſoribus ad faciendum & diſponendum prout eis placuerit, & ſucceſſoribus ſuis, quæ verba videntur intelligend[illegible] de heredibus extraneis, nam licet verba pro ſe & ſucceſſoribus, intelligantur ſecũdum naturam actus, id eſt, feudi, de heredibus ſanguinis & [illegible]uis. Bald. *in l. 1. quæſt.* [illegible] *verſic. & not. ff. de rerum diuiſ.* Dec. *in conſil.* 171 *colum. pena*[illegible] vbi defendet Socinum qui contrarium voluit. & idem Dec. *in conſil.* 258. *column. 2. poſt medium & colum. 4.* allegat Barba[illegible] *conſil. penult. column. 11. libr. 1.* & idem Decius *in conſil.* 390 *colum. 3. ad fin.* [illegible] *in conſil.* 445 [illegible] *circa medium* Curtius *conſil. penult. colum. penult.* Ripa *in l. quæſitum §. ſi quis eum tutore. column. 1. ff. de priuileg. cred.* tamen quando apponunt illa verba: ad faciendum, diſponendum, &c. feudum non amplius retinet naturam ſuam, quia poteſt feudum eo caſu transferri in extraneus ſine conſenſu domini. *c. 1. de feud. non hab. propt. natur. feud.* Alexand. *in conſil.* 28. *column. fin. libr. 7.* ergo non poteſt dici quod intelligantur ſecundum n[illegible]turam feudi, quæ non c[illegible]nſideratur in illa conceſſione, ſed intelligentur proprie ſecundum naturam ipſo[illegible]um verborum, per quam appellationem heredum ſeu ſucceſſorum inclu[illegible]dentur omnes etiam extranei. *l. quadam. §. u autem ff. de[illegible] [illegible] gloſſ. in l. ſtipulatio iſta. in princip. in verbo, cæterorum ff. de verb. obl.* It[illegible] [illegible]nus declarat Soc. *in conſil.* 152. *col. penult. in 3. quæſt. & colum. fin. 3. libr. & in conſil.* 126 *col.* 17. *& f. 3. libr. 2.* Deciu[illegible] *in conſil.* 1[illegible]1 *colum. 2. circa medium* Curt. Iunior *in conſil. 4. vbi latiſſim. not.* Ad idem vltra memoratos patres adducto Bald. *in conſil.* 70 [illegible] *colum. 2. circa medium libr. 2.* vbi quod illa verba & quibus dederit, late patent, & omnem titulum comprehendunt, ergo etiam titulum hereditarium & ſucceſſionis, quicquid aliter [illegible]luerit Decius ſibi contrarius *in conſil.* 193. *colum. 3. verſic. non obſtat fundamentum ſupra factum.* non tamen operatur clauſula, vt ipſi [illegible] poſſit ſuccedere, cum in perſona à iure prohib[illegible]ta, ita Baldus *in conſil.* 2[illegible] Q[illegible] *ſtro eſt. ſparum libr. 2.* ſed quando feudum eſt tranſitorium ad heredes etiam extraneos, ſimpliciter & vere dicitur hereditarium. Alexandrin. *in conſil.* 16. *colum 4. libr. 5. cum ſimilibus.* quæ Decius ſcribit *in conſil.* 78. *column. 2 in conſil.* 185. *colum. 2. ad fin. & in conſil.* 390. *column. 3. ad finem. & in conſil.* 405 *column. 1. circa medium.* & idem iudicamus de feudo eiuſmodi, quod de aliis bonis hereditariis. Baldus *in l. cum* [illegible] *colum. final. C. de fideicommiſ.* dicens quod [illegible] fideicommiſſi feudum hereditarium prout alia bona, & poteſt alienari tale feudum in præiudicium aliorum. Alexandr. *in conſil.* 18. *colum. 2. libr. 5. cum ſimilib.* quæ Decius notat. *in conſil.* 390 [illegible] *fin. circa medium & in conſil.* 395 *colum. 1. circa medium* Pe[illegible] [illegible] quentiam licet g[illegible]al[illegible] diſpo[illegible] regulariter non comprehendat feuda. *cap. 1. §. in generali. ſi de feudo fuerit controuerſia inter dominum.* Bartol. & Doctores *in l. ſi conſtante ff. ſoluto matrimonio.* vbi Alexandr. *colum.* 9. *ad fin. verſic. item in quantum* Bartol. *in conſil.* 16. *column. 2. poſt medium libr. 2.* Decius *in conſil.* 61. *column. 2. circa medium. & alibi ſæpe.* tamen comprehendet feudum hereditarium, quod propri[illegible] non di[illegible] feu-

dum & ratio eſt, nam feudum de [illegible] in [illegible] generali diſ- 5
poſitione, quia prohibetur alienari & de eo diſponi ſine conſenſu domini, ob id quoties diſponit quis de bonis ſui generaliter non cenſetur intelligi de bonis prohibitis, quia generalis diſpoſitio non extenditur ad prohibita & illicita. *l. ſi procurator.* vbi Modern. *ff. de condit. indeb. l. quamquam. ff. de ritu nupt.* [illegible] Alexandr. *in conſil.* [illegible] *libr.* [illegible] *& in conſil.* [illegible] *ad* [illegible] *lib.* [illegible]. Paul. de Caſt. *in conſil.* 39 [illegible] *br.* [illegible] *ſecundum nouiſſimam impreſſionem.* Dec. *in cap. ex litteris column. fin. circa medium de conſtitut. & in conſil.* 84. *column.* 4. Iaſon *in l. filius à patre. §. fin. in 2. notab. ff. de liber. & poſthumis.* Rurſus diſponens de bonis ſuis non cenſe[illegible] [illegible] de his, quæ ſi includerentur graue inferretur præiudicium [illegible]gument. notatur per Baldum *in l. Aquiliana. ff. de tranſact.* vbi arbitri ex generali poteſtare non poſſunt [illegible]ungere p[illegible] [illegible] facere generalem quit[illegible] tio[illegible]ne velut nimis præiudicialem. ob id [illegible] diſp[illegible]nen generaliter de bonis, intelligeretur de feud[illegible]ibus. inferretur graue p[illegible]ium, quia ſine conſenſu domini di[illegible] poſſet amittere feudum. & [illegible] actus omnino prohibitus & i[illegible] [illegible] od in dubio c[illegible] [illegible] non eſt voluiſſe diſponentem [illegible] ceſſans ratione quando feudum eſt vere & proprie hereditarium Ere[illegible] [illegible] ſi permittitur de eo diſponere ex arbitrio ſine conſenſu domini n[illegible] mali autem commodi præſumitur, ſi de eo cenſeatur cogitatum in generali diſpoſitione & ceſſante ratio[illegible] ceſ[illegible] diſpo[illegible] *adigere. §. quantum ff. de iure patr. cap. cum ceſſante.* & [illegible] Modern. [illegible] & quod feudum veniat in generali [illegible]poſitione quoties alien[illegible] [illegible] permittitur [illegible] Bald. *in d. § in generali.* & Alex. *in d. conſil.* 16. [illegible]*ol. 2. poſt med. lib. 2.* C[illegible]rn. *in conſil.* 321 *ad fin. libr.* 4. vbi clare hoc dicit. Idem firmat Curt. Iun. licet de memoratis patribus mentionem non faciat *in conſil.* 26 *col.* 4 *in conſ.* [illegible] *col.* 4. *verſ. ſed quantum* [illegible] *in conſil.* 11 [illegible] *column.* [illegible] *verſ. ſed* [illegible] *fortius.* vbi qu[illegible] [illegible] a domin[illegible] [illegible] ſunt comprehenditur in generali 6
diſpo[illegible] [illegible] comprehenderetur, diſponens incide[illegible] [illegible] aliquam p[illegible] ſeu aliquod præ[illegible] [illegible], per [illegible] autem præmid[illegible] [illegible] comprehendit[illegible] [illegible]endum, quia Cornel. *in* [illegible] 321 [illegible] *fin.* voluit e[illegible] [illegible]dum comprehend[illegible] ſub [illegible] [illegible], quod [illegible] dubium pu[illegible] [illegible] in generali diſpoſitione quando [illegible], volunt Ripa *in l. obligatione general*[illegible] [illegible] quod in [illegible] quibus feudum poteſt [illegible] comprehendi ſub generali hypotheca. Idem [illegible] feudi ſunt redu[illegible] ad inſtar patrimoniorum & [illegible], & poſſunt alienari, & tutales legitimari ſuccedunt [illegible] Guid. Pap. *quæſt.* 59. ſimiliter in Franc[illegible] appell[illegible] [illegible] in materia feudali veniunt extranei. Guid. Pap. *quæſt.* [illegible] in Fran[illegible] fœmina ſuccedit in feudo [illegible] Papæ *quæſt.* 29[illegible]. ¶ In qua re peſſime Iaſ. locutus eſt *in cõſ.* [illegible] *col. pe.* [illegible] *lib.* 3. vbi voluit feu[illegible] comprehendi feudum in generali diſpoſitione, etiam [illegible] aliud quo impune poteſt alienari allegat Ioan. Fabri *in §. item Seruiana. col.* 11. *Inſt. de act.* vbi Ioan. Fabri dicit totum contrarium, nam primo dicit Ioan. Fabri quod feudum obligari non poteſt ſicut alienari, deinde dicit quod fallit in Francia de conſuetudine, & ſic aperte præſupponit quod veniat in generali obligatione, vbi ſpecialiter poteſt obligari, & vbi Ioan. Fabri aliud diceret, male & ipſe loqueretur Comprobantur iſta opini[illegible], qu[illegible] loquitur lex de feudo, quod generalis diſpoſitio ad illud non pertinet, & ſic de feudo proprie, quia verba ſunt intelligenda proprie & ſimpliciter, non ſecundum quid. *l. hoc legatum. ff. de legat. 3. l. Titia text. &* ibi Bald. *ff. de legat. 1.* Socin. *in conſil.* 121. *column. 7. poſt med. lib. 4. cum ſimil.* ſed feudum hereditarium non dicitur feudum proprie & ſimpliciter. ſed cum illo additamento hereditarium, ergo ad eiuſmodi feudum extendenda non eſt lex. Præterea licet feudum non includatur in generali diſpoſitione, ſecus videntur in vniuerſali, quę ampliora complectitur, puta res venales, ad quas ſola generalitas non extenditur. Bart. *in l. generali. §. vxori. ff. de vſufruct. leg. cum ſimil.* vt no. Dec. *in cap. ſedes column. 2. & 5. poſt med. de reſcript. in conſil.* 22. *col. fin. & in conſ.* [illegible] *alibi ſæpiſſime* & in ſpecie quod feudum includatur ad vniuerſalem diſpoſitionem, tradit Cornel *in dict. conſil.* 321. *in fin. lib.* 4. Iaſ. *in conſil.* 224. *column. 2. in fine verſic 3. iſtud ſtatutum libr. 2.* Curt. Iun. *in conſil.* 26. *colum.* 4. Decius *in conſil.* [illegible]6. *& in conſil.* 389. *colum. fin. ante med.* Imo feudum hereditarium non ſolum includitur ſub diſpoſitione vniuerſali, ſed etiam generali & defi-

[illegible] quæ ſupra dixi, quia [illegible] [illegible] res he[illegible] ſe [illegible] ta um[illegible] cadi [illegible] nem [illegible] ideo di

7 [illegible] ſit [illegible] gitur [illegible] & non extenditur ad [illegible] tionem. Calc. *in conſil.* 1. *col.* 1. *circa fin. per text. in l. creditor.* § *Lucius. in fin. ff. de bon. author. iudic. poſſ.* Addo Rot. *deci.* 18[illegible] *noui. part. in* [illegible] vbi quod in materia odioſa diſpo[illegible] comprehendere ea in quibus non eſt [illegible] dem [illegible] includendi feudum, per quam incluſi[illegible] quanta in aliis bonis [illegible] quibus ceſſat pœna. ¶ [illegible] contra Cornel. Dec. [illegible] & C[illegible] adducit [illegible] *l. ſi pater* [illegible] *de his quæ in fraud. cred.* vbi licet concedatur liber[illegible] adminiſtratio, non tamen videtur conceſſum, vt quid [illegible] in fraudem [illegible] creditorum, & ſic verbum illud libera, licet alioq[illegible] vniuerſale, non tamen includit rem prohibitam [illegible] prohibitum ſit feudum alienari ſine conſenſu domini [illegible] videtur comprehendi in alienatione vniuerſali. ¶ Secundo ad [illegible] adduco Ang. *in conſ.* 6. *Lata ed. circa fin.* vbi quod verba in omnibus & per omnia, & ſic vniuerſalis geminata recipiunt interpretationem, ne ad iniquiſſimum perducantur, ſed adaptentur [illegible] quantum fieri poteſt, ſequuntur Alex. & Modern. *in l.* [illegible] intellectus iniquiſſimus dicere quod intel[illegible] quis alienare feudum [illegible] incideret in pœnam, & priua[illegible] ¶ Tertio adduco Paul. de Caſtro *in conſ.* 417 *quod dn. creditus. col.* 1. *ante med. lib.* 1. vbi quod legatum vniuerſale omnium rerum quas qui [illegible] habet in tali loco [illegible] ad [illegible] quibus teſtator habebat plenum ius, non [illegible] per text. *in l. qui habebat in princ. ff. de leg.* 3. & *in l. legat.* § [illegible] *legat.* Eodem modo videtur dicendum quod alienatio facta verbis vniuerſalibus reſtringatur ad bona allodialia de quibus poterat alienans ad plenum & libere diſponere, non [illegible] comprehendat bona, quæ in ſpecie non poterat alienare [illegible] domini. ¶ Quarto dico quod verba vniuerſalia reſtringi debent ſecundum materiam, vt probatur in [illegible] Pſal. [illegible] Et tu Domine liberabis eos, ad nihilum de[illegible] gentes [illegible] nam dictio vniuerſalis omnes reſtringitur ſecundum ſubiectam materiam ad gentes [illegible] quia boni non deducuntur ad nihilum. [illegible] Pſal. 64. [illegible] Ad te omnis caro veniet. nam reſtringitur [illegible] omnis ad [illegible] quia damnati non venient ad Dominum. ¶ [illegible] Pſal. 63. Et timuit omnis homo. nam reſtringit [illegible] ad homines qui talia viderunt. Eodem modo dicendum videtur quando alienat quis omnia bona ſua quod reſtringitur alienatio ad [illegible] quæ poſſunt impune alienari. Pro quo adduco Gem. *in con.* [illegible] vbi

8 quod [illegible] dictio quoquomodo licet ſit vniuerſalis, tamen reſtringitur ad modos proportionabiles materiæ idoneæ, in qua [illegible] *per gl. not. in* [illegible] *q.* 1. ſed magis in terminis adduco gl. *in cap.* 1. *de conſ.* [illegible] vbi text. dicit quod canones ab omnibus ſeruandi ſunt. dicit gl. ab omnibus ſcilicet in [illegible] Papæ ſubiectis. idem not. glo. *in c.* [illegible] *de ſent. excom. lib.* [illegible] ſequitur Gem. *in conſ.* [illegible] eadem dicendum eſt quando alienat quis omnia bona ſua, quod reſtringitur alienatio ad bona ſubiecta poteſtati [illegible] & quæ [illegible] libere & impune poteſt [illegible] ¶ Q[illegible] adduco quod ſcribit Dec. *in con.* 36[illegible] *col.* 3. *in fin.* vbi quod verbi [illegible] non comprehendunt odioſa. per te[illegible] § *Titium.* [illegible] ¶ Adduco [illegible] *col.* [illegible] *ſi tibi* [illegible] *de cond. ob* [illegible] *de ſent. excom. lib.* 6. quæ [illegible] Bal. *in conſ.* [illegible] *circa* [illegible] *de ſen.* [illegible] tradit S[illegible] plus q[illegible] facta non inclu[illegible] feudum [illegible] incluſione [illegible] iure ſuo. Sed illud inconueniens [illegible] feudum [illegible] An[illegible] [illegible] quia [illegible]

[illegible] p[illegible] & [illegible] R[illegible] *dini* [illegible] *per* [illegible] *matrem* [illegible] § *etiam.* [illegible] D[illegible] bat. licet in p[illegible] ſequi[illegible] Dec. [illegible] vbi [illegible] Cornel. [illegible] *pen.* & [illegible] ſed hac [illegible] bi agitur de [illegible] beneficii [illegible] dentis, lauſſim [illegible] late Mod. ergo not[illegible] heredes habi[illegible] poteſt [illegible] præiudicium ſu[illegible] dum [illegible] quo vniuerſaliter con[illegible] quib[illegible] etiam feudum [illegible] pactum, quod liceat [illegible] do eſt cla[illegible] dam dicatur [illegible] quod tranſit in deſc[illegible] dum proſe & heredi[illegible] tura pertinet ad [illegible] mu. & eſt text. *in l.* [illegible] *l. in animalib. C. de legib.* [illegible] materia [illegible] quod extraneis non competit reſtringitur [illegible] id eſt, deſcendentes licet [illegible] quod tale [illegible] heredes, *ut tamen* [illegible] § *etiam ſi parente ff. de* [illegible] *de probat.* vbi Dec. [illegible] 19 & idem Dec. *in* [illegible] 185 [illegible] 3. *ante med.* & ſi dicatur quomodo [illegible] dicere eiuſmodi feudum eſſe hereditarium, ſi deſcendentibus tantum defertur. videtur enim [illegible] uerſari natura [illegible] hereditarium, qu[illegible] ad omnes heredes pertinet. Reſpondeo quod non dicitur hereditarium, quia tranſeat in omnes heredes, ſed quia poſſunt deſcendentes, qui inuitantur ad eiuſmodi feudum, eſſe heredes defuncti. Itaque primo modo terminus, hereditat[illegible] reſpicit ipſam rem, id eſt, ipſum feudum, quod venit ad omnes heredes etiam extraneos, ſecundo modo ſolum reſpicit ad perſonas deſcendentes quas oportet eſſe heredes. In caſu noſtro conſid[illegible] ratur iſta qualitas hereditarium, primo modo, id eſt, vere & proprie, quia omnes heredes etiam extranei vocantur ad eiuſmodi feudum ob illa verba, ad faciendum, diſponendum, &c. [illegible] videtur dicendum iſto caſu, quod heredes extranei admittantur ad feudum etiam ab inteſtato, propter illa verba ad faciendum, diſponendum, &c. prout voluit Socin. *in d. conſ.* 252. *column. pen. in* 3. *q.* & *col. ſeq. lib.* [illegible] *conſ.* 26. *col.* 7. & *ſeq. lib.* [illegible] Dec. *in d. conſ.* 171. *col.* 2. *circa med.* late Curt. [illegible] *in d. conſ.* 4. quibus addo Bald. *in d. conſ.* 70. [illegible] *col.* 2. *circa med. lib.* 1. a fortiori admittentur, quando teſtator [illegible] ponit, quia tunc demum videtur vaſallus feciſſe & diſpoſuiſſe: ſed ab inteſtato res videtur magis dubia ex his, quæ Soc. ſcribit *in conſ.* 19. *col.* 4. *lib.* [illegible] condito autem teſtamento res ceſſare videtur omni difficultate quod inſtitutio [illegible] dominorum Ludouici & A[illegible] onis referantur ad bona feudalia. Taurini, 20 Sept. M.D.LIII.

S V M M A R I A.

1 *Filii qui approbant teſtamentum patris, totum non partem approbare* [illegible] *dentur.*
2 *Ignorantia excludit e*[illegible] *iuramentum ne quidem tunc opere* [illegible]
3 *Approbatio generalis teſtamenti non videtur extendi ad legata in* [illegible] *ſpecialiter detracta.*
4 *Natura approbationis eſt* [illegible] *firmare & laudare quæ* [illegible] *non etiam* [illegible] *de nouo aliquid concedat* [illegible]
5 *Nunquam cenſetur derog*[illegible] *aut renunciatum alicui iuri* [illegible] *expreſſe* [illegible] *dum ſit.*
6 *Expreſſum dicitur illud* [illegible] *reperitur.*
7 *Q*[illegible] *aliquid per* [illegible] *paratur* [illegible] *modo* [illegible]

C O [illegible] S I [illegible] V M C[illegible] II.

In caſu [illegible] *robationis* [illegible] *menti.*

D[illegible]

autem

[illegible] tetiam [illegible] teſta[illegible] [illegible] approbantur [illegible] Sed [illegible] non [illegible] codicilli [illegible] Bald. [illegible] Alex. [illegible] Decius in conſ. [illegible]

[illegible] eſt verum quod multi contra dicunt [illegible] Si vero [illegible] tenorem codicillorum [illegible] videtur ſatis ambigua [illegible] Secundo, quia ſi ut rupto teſtamento, rumpuntur & codicilli *l. ſi quis cum nullum. §. fin.* [illegible] approbatio teſtamenti [illegible] propoſito [illegible] approbans teſta[illegible] [illegible] ergo approbans teſta[illegible] [illegible] in gl. & Bart. [illegible] Doct. [illegible] Alex. [illegible] teſtamento [illegible] codicillos [illegible] ſavorem [illegible] approbare codicillos [illegible] rationis, etiam in odioſis [illegible] Bald in [illegible] *fin. Cod. de in ius voc.* [illegible] antecedentium [illegible]

[illegible] teſtamenti eorum, etteſ [illegible] [illegible] *Socin. in conſ.* 8. *vol. 2 prius inc. verſ. caterum.* [illegible] approbationis eſt confirmare & laudare 4 [illegible] de nouo aliquid concedatur. *l. &* [illegible] ibi Doct. *gloſſ. in* [illegible] approbatio actus [illegible] non ampliat naturam ap[illegible] nec aliquid addit approba[illegible] [illegible] *notandum eſt quod iſta* [illegible] Alexand. in [illegible] *lib. 4.* [illegible] teſtamentum [illegible] debean[illegible] [illegible] pia, alias per approbationem fie[illegible] [illegible] Bald. [illegible] approbatio teſtamenti [illegible] approbantis Bald. [illegible] *ff. de pœnal.* ergo approbatio teſtamenti intel[illegible] [illegible] Decius in [illegible] ratio eſt, quia neceſſario [illegible] approbans teſtamentum [illegible] codicillos, nam poteſt [illegible] approbatum teſtamentum cum omnibus ſuis qualitatibus, conſtante & durante efficacia codicillorum [illegible] voluntas [illegible] Alex. in conſ. 122. col. [illegible] approbans [illegible] approbatio [illegible] *conſ.* 124 [illegible] omnibus, & [illegible] minutum erat legatum factum in teſtamento, quia alias neceſſario

[illegible]

7 [illegible] quando aliquid [illegible] ſufficit [illegible] ſuppoſito quod [illegible] codicillorum [illegible] dubio, quia non [illegible] qui illud obiecit [illegible] in aliquo [illegible] in codicillis, in quibus legat [illegible] approbatione teſtamenti [illegible] aut per approbationem teſtamenti [illegible] competenti ex forma codicillorum. [illegible] Taurinis, 21. Septemb. M.D.XXXV.

S V M M A R I A.

1 [illegible]
2 [illegible]
3 [illegible]
4 [illegible]

[illegible]

C[illegible]

D[illegible]

[illegible] Secundo [illegible] Bart. [illegible]

[illegible]

nare

[illegible] ſidem [illegible] quod cauſa poſſe [illegible] po [illegible] ad nnera. ¶ Sed [illegible] potest [illegible] pia [illegible], & [illegible] poſſeſſio [illegible] ſi ob [illegible] petitorio. ¶ [illegible] magiſtratu [illegible] tamen [illegible] Rurſus, licet [illegible] tamen dici poteſt [illegible] vbi [illegible] capax etiam cauſa [illegible] ſecundum Alex. [illegible] omnino obtin [illegible] quæſitu facti [illegible] ¶ Tertio [illegible] in caſu noſtro quia [illegible] contra magnificum Senatum quod [illegible] incompetens iudex, quæ oppoſitio videtur neceſſaria ſecundum An. [illegible] conſil. 98. [illegible] ¶ Confirmatur [illegible] poteſt [illegible] contra confitentem, licet oppo [illegible] non opponentem [illegible] competere, [illegible] ſcribit [illegible] modo reſpondet, [illegible] perſonam iudex eſt [illegible] ſequitur [illegible] non poteſt [illegible] contra [illegible] non tenet [illegible] Secundo reſpondeo [illegible] ecuto [illegible] habet latenter [illegible] patiantur [illegible] ¶ Non obſtante modo fundamentum [illegible] quod cauſa ſpiritualis [illegible] propter eam poſſeſſionem, ergo [illegible] ſecundum Bartol. [illegible] Reſpondeo quod illud non ſemper obtinet, & [illegible] contrarium facit text. [illegible] dum dicit [illegible] & gloſſ. ſubaudit largiſſime. Ad idem eſt textus in l. liberorum. ff. de verbor. ſignif. ibi appellatione filiorum nepotes [illegible] ſed improprie ſecundum Bartol. [illegible] contrarium etiam iura non parum multa [illegible] idem [illegible] Bartol. nam proprietas & [illegible] diuerſa & ſeparata, ergo [illegible] quod ab [illegible] eodem modo & proprie, ſed [illegible] naturam ſuam, etenim [illegible] ex natura [illegible] idem verbum ponitur [illegible] duo diuerſa & ſeparata [illegible] proprie [illegible] proprie [illegible] propter eius naturam poſſeſſionis, & ſic poſ-

ſeſſionem [illegible] eſt quid [illegible] & [illegible] namam [illegible] ¶ Quæ [illegible] ſeu [illegible] ſia iuriius in verſic. [illegible] Bart. in l. 1. §. [illegible] actus quaſi [illegible] officii 6 nis [illegible] ipſum [illegible] ¶ N [illegible] fundamentum [illegible] proprietatem & poſſ [illegible] diuerſa & repugnantia [illegible] neſt circa idem ſubiectum [illegible] eſſe [illegible] ſpirituale vel [illegible] ſpirituale & non [illegible] ſed [illegible] ¶ Secundo [illegible] nam petitorio [illegible] cauſa [illegible] non ha [illegible] res quod [illegible] immo [illegible] contrarium [illegible] in aqua [illegible] non poteſt [illegible] fectus. Simile [illegible] te & fœmina [illegible] ductionem actionis [illegible] competentia actione [illegible] dei [illegible] Bal. ¶ Non obſtat [illegible] fundamentum [illegible] quod poſſeſſorium cauſa ſpiritualis [illegible] conſequens [illegible] eſſe [illegible] petit [illegible] quia retorquetur [illegible] iſta tatione [illegible] competentem de cognitione [illegible] Anch. in conſ. 21. [illegible] vera eſſet ratio Barb. falſa eſt [illegible] ſtimantium [illegible] iudex laicus cognoſcere [illegible] ſi quidem [illegible] & iura inuicem ſunt connexa & [illegible] ab altero [illegible] tamen [illegible] ſit eſt [illegible] ¶ Non obſtat quartum fundamentum [illegible] quod [illegible] iudex [illegible] ¶ [illegible] in caſu [illegible] buius. ob id non videtur curanda opinio eorum qui Barb. [illegible] pliciter

[illegible]

iudex [illegible] de [illegible]
appa[illegible] dubi[illegible]
videtur ſtat dum [illegible] Taurini[illegible]
[illegible] & [illegible] Salutat[illegible]
[illegible] Sen[illegible] & p[illegible]
[illegible] poſſ[illegible] natur[illegible]
tam continuis & contes[illegible] idem ob[illegible]
natur[illegible] quando [illegible]
[illegible] *de immemoriali* [illegible]
ff. de lenib. [illegible] videtur [illegible] abunde [illegible]
[illegible] ¶ Videamus nunc [illegible] ſecunda dubi[illegible]
[illegible], quod Canonicorum cauſa [illegible] poſſ[illegible]
[illegible] da, quoniam probaſſe dic[illegible]
ant[illegible] ſaltem continuando poſſ[illegible] in
[illegible] habuerunt cauſam, quod permittitur. A[illegible]
[illegible] 192. *col* [illegible] *in con.* 2 [illegible] *col.* 2. *ſtrictius lib.* [illegible] poſſ[illegible]
retinendæ [illegible] poſſeſſio antiqui[illegible] adſent[illegible] ob
[illegible] *de prob. tum ſim* [illegible]
D. Albe[illegible] Caſinus Vicar[illegible] generalem [illegible]
chionis Saluc[illegible] in redditione [illegible]
cauſam monialium eſſe omnib. modis ante [illegible]
pedicare an ignore poſſeſſorio Canonicorum Re[illegible] en-
9 tibus fundamentis. ¶ Primo [illegible] quoties agitur poſſ[illegible]
ſpiritualis [illegible] adipiſcendæ, ſiue retinendæ, ſiue rec[illegible]
ſin per probandus eſt titulus [illegible] P[illegible] pæ.
q. 8. Dec [illegible] *C. de edictu diui A*[illegible] 10.
& ratio eſt, quia iſti prælati [illegible] benefi[illegible] domi-
ni [illegible] bonorum ſpiritualium, ſed habent [illegible] adminiſtratores
& procuratores, qui pro [illegible] omnibus obligantur [illegible] dare
[illegible] *l. ſi quis miſſus* [illegible] & tunc [illegible]
[illegible] *reg. lib.* 6. [illegible]
de [illegible]
[illegible] R[illegible] *in con.* 4[illegible] 9.
col. [illegible] quod opponi poteſt [illegible] p[illegible] latum
po[illegible] tenebant, q[illegible] illa eratis [illegible] ſub præ[illegible]
tu p[illegible] & inualidæ [illegible]
datum [illegible] capitulo ad eligen[illegible] contra [illegible]
Baſilie[illegible] quo caſu poſſ[illegible] apparet [illegible] & notorie [illegible]
colora[illegible] ¶ Similiter oppo[illegible] poteſt contra po[illegible] bene[illegible]
exceptio extrauag. [illegible] contra tenentem duo bene[illegible]
incompatib[illegible] Rota *deciſ.* 371. *nec quod vis aliam antiquam* [illegible]
Roman. *in d. conſ.* 499. *colum.* 1. *verſ.* [illegible] ad idem [illegible]
R[illegible] *cons.* 49[illegible] quod obſtitere exceptio qu[illegible]
[illegible] incompat[illegible] ſed contrarium [illegible]
d[illegible] *ſecunda.* [illegible] de [illegible]
[illegible] ob[illegible] duorum incom[illegible]
[illegible] quando [illegible]
[illegible] con[illegible]
[illegible]

[illegible]

[illegible] Canonicorum [illegible]
[illegible]
in tract. [illegible] 174. *colum.* [illegible]
[illegible]
de rebus dub. [illegible]
[illegible]
[illegible] *nd. lib.*
[illegible]
Plu[illegible]
[illegible]

[illegible]

... ceterum nō permittit [illegible] qui cauſam non obtinet [illegible] non eſt excluſ[illegible] agentis [illegible] quod non liceat [illegible] poſſeſſione [illegible] non habeo [illegible] Ex quibus iudicatur [illegible] debent [illegible] non [illegible] vnionem [illegible]

13 [illegible] obſtare qui [illegible] [illegible] inquiſitione [illegible] 6. Anch. in conſ. 380. [illegible] allegatur. item quando quis [illegible] diœceſano, non poteſt [illegible] præſumitur [illegible] vide [illegible] Dec. in conſ. 121. [illegible] præcedentem, vbi alius non docet [illegible] prout faciunt dominæ [illegible] infra [illegible] nunc præſumptio quæ videbatur [illegible] dominis Canonicis [illegible] probationibus [illegible] fortius [illegible] apparet ex veris [illegible] Canonicorum, quod [illegible] præſumptio vincitur à probationibus [illegible]

[illegible]

conuenient [illegible] ſed non probato quod eccleſia [illegible] beatur, fruſtra [illegible] præſumatur [illegible] conſenſus ſuperioris in conſtitutione parochiæ de qua non apparet. [illegible] nem conſenſus in vnione [illegible] pro eccleſia ſcilicet Ioan. Baptiſtæ [illegible] Canonicorum, [illegible] adhuc cauſa [illegible] videntur prætereunda, quia non oſtenditur [illegible] eccleſiæ quam parochialem eſſe probatum non [illegible] quod eſſet parochialis, non fuit monſtratum [illegible] decimæ, ſubiecta eſſe [illegible] parochiæ. § [illegible] dicta ſunt ex abundanti, quia [illegible] Canonicorum [illegible] S. Ioan. Baptiſtæ amplius non habetur in conſideratione. ſed per vnionem [illegible] [illegible] ſine quo [illegible] Bald. [illegible] & Imol. [illegible] lib. 6. & quando [illegible] principalis [illegible] annectitur [illegible] Salicet. C. de iure dot. [illegible] [illegible] ex quibus videmus quod licet ſubſtitutio ante euentum conditionis [illegible] tranſmittatur ad hæredem, [illegible] ante euentum conditionis [illegible] Alexand. in [illegible]

[illegible]

[illegible] ſtes partis, quia generaliter loqui [illegible] magis credendum eſt teſtibus [illegible] ... teſtes deponentes in ſpecie teſtibus [illegible] ... nam quando teſtes [illegible] dicuntur [illegible] veriſimilior [illegible]

[illegible]

d[illegible] curæ priuatæ [illegible] & ſ[illegible] C[illegible] m[illegible] um[illegible] ter[illegible] dem Curt. in conſ. [illegible] lib. 3. q[illegible] le[illegible] ptur [illegible] ct. de anni iuit. [illegible]
20 [illegible] concurrunt [illegible] † quæ enim n[illegible] ant *l. ration.* [illegible] *instrumenta l. non* [illegible] *bat.* quæ in rad hæc [illegible] oppoſit [illegible] alle- [illegible] *l. m*[illegible] *auctorum.* ¶ P[illegible] conſtan[illegible] m efficacius & [illegible] pro- ba[illegible] non [illegible] antiquis, & non ageretur d[illegible] ſtuc [illegible] per[illegible] indic[illegible] præſumptionem quæ ſuffi[illegible] cere[illegible] plenam [illegible] Anch. *in conſ. 276* [illegible] *diligenter narratione* [illegible] *colum* [illegible] Roman [illegible] *circa fin.* C[illegible] *in conſ.* [illegible] *lib. 3.* Al[illegible] *in repet.* [illegible] *colum. 9.* [illegible] Dec[illegible] *in conſi. 42 colum fin. poſt princ.* [illegible] *colum. 3.* [illegible] *in conſi. 566 colum. 1.* & ultra Decia[illegible] eundem Al[illegible] *in conſil.* [illegible] *6 colum.* [illegible] *lib. 2.* Soci *in conſil. 149 colum. 6. verſi. confirmatur prædicta lib. 1.* quod tamen di[illegible] non antiquis non ita admitterem per ea quæ ſupr. dixi, in quo me remitto ad dict. tract. de antiqui. tempor. [illegible] eas quod multitudo titulorum hoc videtur operari. *argumen. l. baliſta ff. ad* [illegible] *bell.* & quod dicimus de [illegible] genui- nis quod plene probant. vt habetur in *c.* [illegible] *ſicantia* [illegible] *ſimilibus.* Quinto principaliter, potiſſime veritatis præ- dicto, poſſeſſionum Canonicorum [illegible] antiquior, cuius [illegible] [illegible] ſup. oſtendimus [illegible] poſſeſſionum ex inſtru- m[illegible] antiquis, tamen poſſeſſio monialium vide- tur p[illegible] magis iuſtificata per titulo[illegible], Bart. *in l.* [illegible] *colum.* [illegible] *ff. de poſſ.* Bald. *in l. quis* [illegible] *in fin. C de edict.* [illegible] *ſimilib.* quæ Dec[illegible] *in con. 6 colum fin. in conſil.* [illegible] *9 colum. 1 & in conſil. 2* [illegible] *9 colum. fin.* pul[illegible] Iaſo. *in l.* [illegible] *nihil commune. colum. 8. verſicul. ſubdit Bart.* [illegible] *de acquir. poſſ. ff.* cum poſſeſſioni titulatæ nihil videtur obſtare poſſeſſionum antiquius aduerſariorum: etenim di[illegible] Doctor poſſeſſionem iuniorem præſumi clan- deſtinam & [illegible] in quoties aliquis oſtendit poſſeſſionum an- tiq[illegible], ſed iſta præſumptio non eſt probatio. *c. forus. §. argumen-* [illegible] *ff. de* [illegible] *& no. in rubr. ff. de probat. & præſumpt.* ponderan- tes copul[illegible], &, quæ ponitur inter diuerſa. *gloſſ. in rubr. ff. de inr. & fac. ignor.* & quod præſumptio non dicitur probatio, tradit De- cius *in cap.* [illegible] *in 3. not. de probat.* Iaſo. *in l. certi conditio, in princ. colum. 8. ff. ſi cert. pet. & in l. ſecundum colum. 9. ad fin. ff. de verbor. obligat.* i- deo tollitur præſumptio per contrarias probationes. Paul. de Caſtr. *in conſil. 81.* [illegible] *qua vertitur inter* [illegible] *colum. 3. ad fin. verſic.* [illegible] *ſi dicatur* [illegible] *ſupra dixi.* item præſumptio for- tior tollit infirmiorem. *c. literas* vbi Abba. *in 4. not. de præſumpt.*
21 Bartol. *in l.* [illegible] *ff. de* [illegible] *in integr.* & † præſumptio ſpecialis tol- lit generalem. B[illegible] *in l.* [illegible] *ff. de* [illegible] Bald. *in* [illegible] *colum.* [illegible] *verſicul.* [illegible] *opponitur. C de proba.* [illegible] to[illegible] arguitur contra poſſeſſorem recentio- rem quod præſumatur clandeſtina & vitioſa, videtur ceſſare ex cont[illegible] titulis, ſiquidem ex titulis præſumitur bona fides. [illegible] *ff. de vſucapio.* & ſupra o- ſtendimus ad aliud propoſitum, vel certe negari non poteſt quin præſumptio bonæ [illegible] ex titulis, præualeat præ- ſumptioni [illegible] fidei [illegible] iuniori poſſeſſione ob antiqui- orem poſſeſſionem alterius [illegible] in materia probatio- num [illegible] illa præſumptio ſeu probatio ex qua iudicat[illegible] bonum, præfertur [illegible] vel præſumptioni, per quam arguitur malum, quia bonum magis conuenit naturæ & iuri com[illegible], quo quilibet præſumitur bonus, ideo teſtes de- po[illegible] eſſe bonæ vo[illegible], conditionis & famæ præfe- r[illegible] teſtibus [illegible] ponentibus malam famam. Bald. *in cap.* [illegible] *ſtra in princ.* [illegible] Anch. *in conſil. 253.* [illegible] *presbyteri circa fin.* Cornel. *in conſil. 210. colum.* [illegible] *lib. 1.* Dec. *in conſil. 163. colum 8. verſ. & ex prædictis reſpondetur.* [illegible] *colum. ſequ. ad fin. & in conſil 448 colum. 2. poſt med.* Martil [illegible] *plurium in* [illegible] *99 ff. de quæſtio.* & in termi- nis quod p[illegible] recentiore [illegible] non præſumatur clan- d[illegible] poſſeſſioni antiquiori ſine titulo, volu- it A[illegible] Butr[illegible] Alex qui eum ſequitur *in conſ.* [illegible]*6. In cauſa* [illegible] *col. m. 2. ad fin. verſ. fortius etiam dici lib. 2.* idem voluit Alex. *in con.* [illegible] *circa med. verſ. quia reſpon- det quod poſſeſſ.* [illegible] *3.* Ideo dic[illegible] Doctor. quod poſſeſſio iunior præſumatur vitioſa, ita ad ſuperficiem non ſunt [illegible], ſed q[illegible] poſſeſſio iunior non iuſtificatur ex [illegible] ita pu[illegible] lare d[illegible] Iaſ. Curt. *in conſ. 12. In conſ.* [illegible] *videtur prima* [illegible] *dicendum quod communiſſ. as colum.* [illegible] *verſ. & tollitur illud notiſſimum. lib.* [illegible] Iſta tamen [illegible] ſponſio non videtur tuta. ¶ Secundo igitur reſpon- deo qu[illegible] regula quod poſſeſſio iunior etiam titulata præ- ſumitur vitioſa & clandeſtina, procedit quoties titulus eſ- ſet ha[illegible] poſt [illegible] poſſeſſionem propter ſuſpi[illegible] fraudis, qu[illegible] facile poſ[illegible] ſupponi alios à quo emeret res ad exclu- dendum antiq[illegible] poſſeſſorem, ſed quando titulus priore loco eſſet habitus, [illegible] poſſeſſio, eiuſmodi poſſeſſio ita timi[illegible] [illegible] præfertur poſſeſſioni antiquio- ri ſine ti[illegible] qui propter [illegible] ceſſatio nimirum vitium, & pro- pter titulo[illegible] [illegible] haberetur poſſeſſio ſilet o- mni[illegible] Ba[illegible] *diſputata in-* *cipiente* [illegible] *de* [illegible] ſequitur Curt. iunior *in conſ. 1*[illegible]*8 colum. 7. verſic.* [illegible] ¶ [illegible] reſpondeo quod dicta
22 regula † quod po[illegible] nota & [illegible] clandeſtina, non procedit [illegible] po[illegible] ni[illegible] palā & pub[illegible] poſſeſſio- nem [illegible] titulis [illegible] ſe po[illegible] So- ci. *in conſil. 266. colum. in fin. verſi.* [illegible] la[illegible] de pluribus titulis palam & publice habitis, in quibus ſuſpicio aliqua non eſt alicuius clandeſtinitatis [illegible] etiam multitudine titulorum per interualla habitorum [illegible] tollere vide- tur omnis mala ſuſpicio facit quod [illegible] Co[illegible] *in conſilio* [illegible]. *colum. 3. ad fin. libro 1.* vbi quod poſſeſſio antiquior non [illegible] quando habens poſſeſſionem recentiorem, non poſſidet [illegible] clam ab antiquiore poſſeſſore, ſed dominæ moniales non poſ- ſident vi vel clam ab antiquiore poſſeſſore, cum habeant veros ac legitimos titul. ¶ Aduertendum tamen circa dictum illud Curtii iunioris *in dicto conſilio centeſimo* [illegible] *colum.* [illegible] *prima.* quod præferunt poſſeſſio iunior titulata quando ſub[illegible] eſſet titulus ante poſſeſſionem. Nam illud dictum videtur perte[illegible] [illegible] & contra Doctores communiter, qui præſuppo[illegible] [illegible] dum communiter accidentia, quod titulus præcedat poſſeſſio- nem tanquam cauſa ſuum cauſatum aut effectum, & [illegible] præ- ſumptæ clandeſtinitatis quæ conſideratur in iunior poſſeſſio- ne, ita militat in titulo eam præcedente ſicut in ipſa poſſeſſio- ne, nam lex præſumit quod non poſſit quis in fide bona emere aut aliter acquirere rem illam quam ab alio tertio prius poſſeſ- ſam ſciret aut veriſimiliter [illegible] poſſet, ideo melius videtur in- telligenda declaranda illa deciſio Doct. volentium quod poſ- ſeſſio iunior etiam titulata præſumitur vitioſa & clandeſtina reſpectu antiquioris poſſeſſionis alterius, [illegible] quando antiquior poſſeſſor id allegat, niſi probetur de bona fide iunioris poſſeſ- ſoris allegando & probando cauſas iuſtas & veriſimiles igno- rantiæ, quod ignoraret de tempore acquiſitionis alium tertium antiquius poſſediſſe, quæ ignorantia tunc videtur probanda cū præſumptio iuris ſit contra eum, nec ſtaretur tunc iuramen- to dicentis ſe ignoraſſe *glo. in c. propo.* [illegible] *82 diſt.* Innoc. & Docto. *in c.* [illegible] *de conſtit.* Abb. & Doctor. *in c. paſtoralis de exceptio.* Rom. *in conſil. 481. in fin.* nam ignorantia debet eſſe probabilis & veriſimilis, Rot[illegible] *444. Extra rotam col 3.* [illegible] Quæ declaratio & limi- tatio optime cadit in caſu noſtro quia monaſterium R[illegible] di ſemper fuit in fide bona nec de tempore titulorum notici- am habebat de poſſeſſ[illegible] aliquo antiquiore dominorum ca- nonicorum. ¶ Sexto arguitur in fauorem moni[illegible] funda- mento efficaciſſimo, quod nulla ratione euitari[illegible] nam quo- ties lex aliquid præſumit, illud debet allegari, alias nihil releuat eiuſmodi præſumptio *l. ſi adulterium cum inceſtu. § idem Pollionis ff. de adulter.* quod procedit etiam [illegible] illud quod præſumitur, eſſet no- torium late Feli. *in c.* [illegible] *ordinem col.* [illegible] & ibi Deci. *col. 2. ad fi. extra. de reſcri.* & idem Dec. *in c.* [illegible] *circa fin. & in c. vt debitus in 3. not. de appe* Iaſ. *in l. ex quacunque colu. 8. poſt med. ff. ſi quis in ius voc. non ierit. & in l. vero §. qui pro rei. col. m. 2. poſt med. ff. qui ſatiſd. cog.* † Ideo bona 23 fides licet præſumatur, debet tamen allegari. Alex *in conſ. 94. co- lum 3 & in conſ. 136 col pen lib. 2. & in conſ. 69 colum. 3. lib. 3.* Ergo poſi- to quod poſſeſſio iunior & titulata præſumeretur clandeſtina & vitioſa reſpectu antiquioris poſſeſſionis, tamen oportebat Canonicos allegare iſtam qualitatem clādeſtinitatis, alias poſ- ſeſſio anti[illegible] nihil omnino p[illegible] ſecundum Bart. *in l. ſi de eo in §. fin. ff. de acquir. poſſ.* & eſt communis Docto. opin. nemine reluctante circa neceſſitatem iſtius allegationis. Alexa. *in conſil. 45. col. fin. ver. fateor tamen lib. 3. quod eſt repetitum in conſ. 130. lib. 3.* tra- dit idem Alex. *in conſ.* [illegible] *colum. 4. poſt med. verſ. vnde dato quod dictorum lib.*

[illegible]

SVMMARIA.

[illegible]

10 D[illegible] [illegible] de tempore continuo, non autem interpel[illegible].

11 Interpretatio Franchi [illegible] ad principem concedentem.

CONSILIVM [illegible]IX.

[illegible] Franch[illegible] Coglians.

D[illegible] poſtul[illegible]. Verba Franch[illegible] [illegible] Illuſt[illegible] [illegible] & co[illegible] [illegible] [illegible] & quat[illegible] [illegible] per dominum [illegible] idem [illegible]

[illegible]

facit Iaſ. *in l. non dubium. col. 8. verſ. adde etiam. C. de legi.* ſed ratio prohibitionis frãchiſiæ fuit, ne fiant audaciores poteſtates ob perpetuitatem officii ſeu longiorem eius vitam ad oppreſſionem ſubditorum, quæ ratio ceſſat quoties interdicitur continuatio officii potiſſimũ, quia impetratio eiuſdem officii videtur impoſſibilis, aut ſaltem difficilis tanquam pendens à voluntate principis *l. apud Iulianum. §. conſtat. ff. de leg. 2.* imo cenſetur impoſſibile etiam illud quod dependet à voluntate alicuius collegii ſeu conſilii ciuitatis. *l. 1. §. fin. vbi gloſſ. ff. de acqu. poſſeſſ. l. 1. vbi gloſſ. ff. de lib. vniuer.* Socin. *in l. ſi ita ſtipulatus. in 1. not. ff. de cond. & demonſt. in l. quidam relegatus. colum. 3. poſt med. verſ. vlt. iſta lex. ff. de rebus dubiis. & in conſi. 62. colum. 3. poſt prin. lib. 4.* Deci. *in c. ad hac. in beato. colum. 1. verſi. & propter difficultatem. de poſtul. prælat.* ¶ Quarto ſtatutum quamuis generale debet reſtringi ad veriſimilia. *l. ſi quis ita. §. fin. ff. de teſtamen. tut. l. ſolutum. §. ſolutam. ff. de pign. actio.* quem text. ad hoc propoſitum pro optimo citat Alex. *in conſ. 86. Viſo themate ſupra formato. colum. 1. circa med. lib. 4.* ſed veriſimile non eſt voluiſſe homines Cigliani eum qui officium poteſtatis ſemel tractauit, ad idem amplius teneri non poſſe: nam finge, aliquem poteſtatem de Republica Ciglianorum optime eſſe meritum per tempus ſui officii, ſi dicimus cogitaſſe homines Cigliani de perpetua excluſione, argueretur ingratitudinis tertio generali ſtatuto vel franchiſia nunquam comprehenditur illud per quod argueretur quis ingratus Bart. *in l. 1. ff. de his qui ſunt ſui vel alieni iur.* Angel. & Fulg. *in l. milites. C. de teſta. mili.* vbi conceſſio generalis arbitrii non extenditur ad ea quæ ſunt inhoneſta. ſimiliter generalis diſpoſitio nihil pertinet ad ea quæ ſunt illicita. *l. ſi pater. ff. de his quæ in frau. cre. l. 1. 4. in prin. ff. ad Macedo. l. 3. §. ſi procurator. ff. quod quiſq; iur. l. ſi procurator.* vbi late Modes. *ff. de condit. indeb.* Aret. *in conſ. 114. colum. fin. cum ſimil.* ſed franchiſia Cigliani fieret inhoneſta, iniqua & illicita, ſi ita generaliter intelligatur, ergo reſtringere eam oportet ad honeſtam.

6 † Rurſus, ſtatutum ita debet interpretari vt non videatur ſine ratione, licet verba aliud videantur importare. Curt. iun. *in conſ. 5. colum. 12. ad fin.* facit Alex. *in conſ. 2. 3. colu. fin. lib. 7.* ſed eſſet iſta frãchiſia ſine ratione, quod poteſtas bene meritus officio ſuo ſemel finito & lapſo quadriennio, ad illud nunquam redire poſſet.

7 ¶ † Quinto verba generalia debent intelligi ciuiliter non etiam ruditer. *l. ſicut. ff. de ſeruit.* & dura interpretatio non eſt admittenda *l. filio pater. ff. de leg. 1.* vbi Iaſ. *in 2. not. Iſtud exornare.* & ſtatuta ſunt benigne non rigide interpretanda, maxime quando nullius verſatur præiudicium *l. 2. §. item Varus. ff. de aqua plu. arcen.* Bal. *in conſ. 183. Statuto ciuitatis Veronæ lib. 2.* & habenda eſt interpretatio in partem humaniorem quæ rationi naturali conuenit, licet interpretatio rigoroſa videatur fortior. Roman. *in conſ. 10. Vi o themate conſultationis. colum. 1. ad fin.* Soci. *in conſi. 23. colum. 8. ad fin. lib. 1.* quod interpretatio humanior admitti debeat, ad incitur tex. *in l. in maiorem. ff. de pact. in l. cum apud.* vbi Bald. *C. de commiſ. ſeruo manum. l. ſi fuerit. §. pla...* vbi Socin. *& in l. cum in teſtam. ff. de rebus dubiis.* ſed ſtatutum Cigliani ſi ita generaliter intelligatur, redditur inciuile, inhumanum & contra omnem æquitatem ac naturalem rationem, ergo intelligendũ videtur ad modum ſupra ſcriptum, præſertim, quia nihil læditur ius communitatis Cigliani per intellectum eiuſmodi. ¶ Alibi ſcribit Rom. *in conſ. 500. colum 8.* quod interpretatio ita fieri debet vt verba amare non intelligantur, ſed cum temperamento quodam. Itaq; temperemus verba franchiſiæ ad continuationem officii, non eti um amare intelligamus & referamus ad perpetuam excluſionem: facit ad hoc regula iuris: quod verba in dubio debent referri ad mediocritatem. *l. ſi quid venditor. ff. de Ædil. edict. l. legato generaliter. ff. de leg. 1. l. fin. § ſed & ſi quis C. commun. de leg... ſi quis argentum §. ſimili quoque modo. C. de donat. & gloſſ. in c. literas. in gloſſ. fin. de filiis presbyter. facit text. in l. ſiue quoque. §. puto generaliter. in prin. ff. de hered. inſtitue. in l. item apud. §. item ait. in fin. ff. de iniuriis.* ſed mediocritas ſeruabitur interpretando franchiſiam de tempore continuato vt ſupra, ſi autem intelligamus quod ſi ſemel poteſtas fuit, ad illud officium nunquam amplius admitti poſſit, erit quædam interpretatio non mediocritatis, ſed vnius (vt dixerim) extre-

8 mitatis ¶ Sexto † materia excluſionis dicitur odioſi & ſtricti iuris tanquam contra ius commune, ideo excluſus ab vno iure non videtur excludi ab alio. Bartol. *in l. ſi domus. per illum text. ff. de ſeruit. vrban. prædior. cum ſimil.* quæ Deci. ſcribit *in c. paſtoralis. colum. 7. poſt med. de except.* ideo ſtricte eſt interpretanda eiuſmodi excluſio etiam in materia fauorabili, quando eſt contra ius commune. Alex. *in conſi. 207. colu. 4. ad fin. verſ. ad allegata. & colum. 6. verſ. nam illa dicitur. eſſe lib. 6.* ergo excluſus à continuatione officii non cenſebitur excluſus ab alio iure, id eſt, quo minus ad nouũ officium vocari non poſſit. ¶ Et poſito: verba franchiſiæ hanc interpretationem nõ admitterent, quam tamen facile admittunt, tamen adhuc idem probãdum eſſet, quoniam memorata interpretatio ſit conformis iuri & æquitati. *glo. in c. paratum. 23. q. 1. in verſi. ſi vero.* Deci. *in c. ex parte. lo. 2. colum 1. circa med. de offi. deleg.* Iaſ. *in l. ſi quando in. colu. 1. ante med. C. de teſtam. milit.* igitur verba franchiſiæ ſunt reſtringenda & limitanda maxime propter ſubiectam materiam. *c. vt animarum. de conſtit. lib. 6. not. in l. ſi duo. ff. de conſti. pec.* Aneh. *in conſ. 163. Viſis & diligenter inſpectis ſubtilibus conſiliis. col. fin. verſ. præterea ita.* ſed materia ſubiecta excluſionis ab officio pertineret ad actum continuationis, ergo, &c. ¶ Quinimo vbi verba franchiſiæ ad continuationem officii proprie referri non poſſent, tamen improprïari deberent & intelligi de continuatione, ne alias ſequatur iniquitas & abſurdum, quod qui in officio bene ſe geſſit, ad illud amplius admitti non poſſit. Alex. *in conſ. 52. colum. 2. lib. 1. & in conſ. 85. colum. 2. lib. 4.* Deci. *in c. cum inter. colum. 2. de except.* Amplius, ſi ex ſtatutis Cigliani prohiberetur ſtatuta ſeu franchiſias Cigliani interpretari, non tamen excluſa cenſeretur eiuſmodi interpretatio per quam abſurdum euitatur. Soci. *in conſ. 84. colum. 3. verſi. 2. principaliter moueor. lib. 1.* vbi etiam quod ratione abſurditatis euitandæ reſtringitur diſpoſitio generalis, imo ſi ſtatutum prohibeat ſubauditionem & interpretationem & mandet verba intelligi prout iacent, non tamen cenſetur prohibita interpretatio per quam euitamus abſurditatem & iniuſtitiam. Anchar. *in reg. c. 1. in fin. de conſtit.* Soci. *in l. Iulianus. colum. 2. verſ. ſed in circa primum. ff. de condit. & demonſtr.* ¶ Septimo franchiſia Cigliani ſi ita generaliter intelligatur, torquebitur ad præiudicium ipſius communitatis: finge officium poteſtatis elegiſſe virum aliquem exercitatum & integri nominis, aptũ ad caſtigandos nocentes, vtiq; damnoſum erit reipublicę, ſi ad idem officium non præterea admitti poſſit: ſed recipienda nõ eſt interpretatio in præiudicium Reipublicæ. Bald. *in l. 2. C. an ſeruus ex ſuo facto.* Alex. *conſ. 32. lib. 5.* Iaſ. *in l. ante a dicta in 2. not. ff. de re iudic.* Deci. *in conſ. 10. col. 3. ad fin.* idem ſcribit Alexa *in conſ. 86. ad fin. lib. 1.* quod priuilegiũ debet interpretari vt minus derogetur iuri fiſci quam ſit poſſibile: eſt autem præiudicium fiſci reſtringere facultatem deputando officiales per quos fiſci negocia procurantur. ¶ Octauo, † verba generalia debent intelligi ſecundum caſum pro- 9

ximum & propinquum, non etiam remotum. *l. ſocium qui in eo. ff. pro ſocio. l. ſi mulier. ff. rer. amot.* ergo franchiſia Cigliani cenſetur excludere officialem tempore proximo & immediato, quod ſtatim ſequitur poſt finitum officium, non autem ab officio temporis remotioris. ¶ Nono, † diſpoſitio generalis debet intelli- 10

gi de tempore continuo, non autem interpellato, iuxta not. per Doct. *in l. 1. ſi ideo in prin. ff. de torti dict. anni iudic.* Ang. *in l. interdum. §. quoties. ff. de publica.* Iaſo. *in rep. l. admonendi. colum 95. verſi. item ad iſtam materiam. ff. de iureiur.* Socin. *in conſ. 118. colum. 2. circa med. lib. 4.* vbi pulchre loquitur. ergo verba franchiſiæ Cigliani ſunt exaudienda de eo qui officium quærit exercere per tempus continuatum, non etiam ex interuallo, maxime quia agitur de materia ſtricta & odioſa, & quia magna eſt ratio diuerſitatis an officium exerceatur per tempus continuatum aut interpellatum, vt ſupra dixi in tertio fundamento. ¶ Decimo, † interpretatio me- 11

moratæ franchiſiæ pertinet ad principem concedentem. Alex. *in l. penul. ſol. ff. ſol. matrim.* Deci. *in conſ. 51. circa fin. & in conſi. 222. colum. 2. poſt prin.* ſed princeps conſtituendo poteſtatem ex interuallo, eum qui poteſtatem antea egerat, facto ipſo franchiſiam interpretatur & declarat quomodo intellexerit illius conceſſionem. *l. Paul. reſpondet non tantum verbis. ff. rem rat. hab.* & in declaratione not. Socin. *in conſ. 263. colum. 5. verſ. non obſtat quod requiritur. lib. 2. & in conſ. 4. colum. 6. circa med. lib. 3.* ergo principis interpretatione tenaciter hærendum eſt. præſertim quia præiudicium tertii non tractatur, per ea quæ Deci. ſcribit *in c. ſuper eo. colum. 4. circa med. de offi. deleg.* ¶ Poſtremo, vbi verba franchiſiæ eſſent obſcura, habenda eſt interpretatio contra impetrantes, quare ſplendidius aut apertius locuti non fuerunt *l. veteribus. ff. de pact.* hinc dicimus quod ſtatutum obſcurum in cauſis allegari non poteſt Bald. *in c. fin. colum. fin. verſi. vltero no not. per illum text. de conſtit.* Deci. *in conſil. 540. ad fin.* Et ita de iure reſpondendum videtur, ad correctionem tamen cuiuſuis rectius conſulentis. Thaurini 14. Ianuarii 1536. Aymo Crauetta ex Sauiliano. I. V. Doct.

SVMMARIA.

1 *Non licet aliquem torquere, niſi probetur delictum eſſe commiſſum.*
2 *Diſpoſitio loquens ſuper facto notorio intelligitur conſtante facto notorio.*
3 *Non creditur aſſerenti ſe eſſe procuratorem alterius, niſi mandatum doceatur.*
4 *In cauſa mere criminali ad torturam non deſcenditur, niſi delictum plene conſtet.*
5 *Ad concordiam reduci debent dicta teſtium, vt falſum vitetur.*
6 *Variatio quando conſideretur.*
7 *Oportet famam oriri ex cauſis probabilibus & veriſimilibus.*

CONSILIVM CCLX.

Conſilium vltimo loco redditum per authorem in vrbe Taurini ante bellum.

DIVINO ſubſidio ex corde poſtulato. Ad dubia ſubtilia ſpectabilis domini Ioannis Galich iudicis appellationum Marchionatus Saluciarum, ſatis videtur reſponſum ex allegationibus abunde & acutiſſime editis per illuſtrem doctorem & præſidem Purpuratum ex his quæ poſtea nos ſcripſimus, attamen ad planiorem explicationem dubiorum, aliqua ex integro notabimus. Igitur conſiderandum eſt, non licere † aliquem torquere & minus condemnare niſi probetur delictum eſſe commiſſum. Bar. in *l. 1. §. item illud. ff. ad Sylla.* Bald. in *c. at ſi clerici. in prin. colum. 3. de iud. & l. certa ſun. C. ne fil. pro pa.* Angel. in *l. certum. in prin. ff. de confeſ.* Iaſ. in *l. iuſiurandum quod ex conuentione. §. fin. colum. [illegible] verſ. mediocrem. ff. de iureiur.* Dec. in *c. cum ſpecialis. §. porro col. 2. de appell.* ¶ Similiter ſi agitur contra aliquem pro damno dato, debet prius conſtare illud damnum eſſe datum in veritate, antequam procedi poſſit Bart. in *l. diuum. per illum text. ff. de teſtam. milit.* Dec. in *conſ. 4[illegible]0. colum. 2.* vbi etiam loquitur in crimine læſæ maieſtatis quod debet prius conſtare illud crimen eſſe commiſſum antequam procedatur contra aliquem quod illud crimen commiſerit. ¶ Similiter ſtante ſtatuto quod credatur iuramento derobati ſuper quantitate damni, debet prius conſtare commiſſam eſſe derobatam. Angel. in *d. l. diuum. ff. de teſtam. milit.* Et quando agitur de interponendo ſecundum decretum contra contumacem, conſtare prius debet de ipſa contumacia. Angel. in *l.*
2 *ſi pupilli. §. ſi plures. ff. de admin. tutor.* Decius in *cap. quoniam contra. 4. colum. 10. verſ. 3. ſummiſſum Abb. de proba.* ¶ Similiter † diſpoſitio loquens ſuper facto notorio, intelligitur dummodo prius conſtet illud factum notorium. *cap. conſuluit. el 1.* vbi Bald. in *auth. ſed nouo iure. verſ. pone, quod quis conijcitur. Cod. de ſeruis fugit.* Alexand. in *conſ. 19. colum. 1. lib. 7.* Corn. in *conſ. 134. colum. 5. libr. 4.* ſed cum tenus ſit furtum probari non poteſt niſi contrectatæ fuerint pecuniæ aliæ in alio domino, vt patet ex furti definitione quæ definitio non competit contra inquiſitum, nam oportebat probari quod contrectaſſet pecunias heredum Antonii Boxii contra eorum voluntatem, rurſus, quod ipſe inquiſitus ſciret & intelligeret pecunias fuiſſe alienas, alias [illegible] furtum non committit. *l. generali. C. de tab. libr. 10. l. fi. ff. de decre. ab ord. fac.* Methodorum *ff. de pœnis. l. 1. circa fi. C. de falſ. monet. & l. commodatum. §. dominum. ff. de publ.* ideo verba ſtatuti vtcunque generalia ſint reſtringenda vt ne ignorans puniatur. Aretio. in *conſ. 21. colum. 3. lib. 1.* quæ ignorantia regulariter præſumitur niſi probetur ſcientia *l. verum. ff. de probat. regul. præſumitur ignorantia. de reg. iuris. li. 6.* aut ſaltem iuramento probatur *cap. ſignificaſti. vbi gloſſ. in verſ. ſi ita eſt. de homicid. & vt circa mixta ſi. de elect. libro 6. cap. paſtoralis de except.* Roman. in *conſ. 54. colum. 2. verſ. contrarium puto verum.* Iaſ. in *l. 3. § iuramentum 3. not. ff. de iureiur. & in repet. l. admonendi. colum. 11[illegible]. verſ. inter cæteros ſibi. ff. eod. tit.* maxime in facto alieno: nam inquiſitus ſcire non poterat pecunias acceptas ab Auguſtina ſorore, pertinere ad heredes Antonii Boxii, niſi Auguſtina [illegible] dixiſſet, quia pecunia in dubio præſumitur [illegible] dantis. *l. & mag. ff. de ſolutio.* Bartol. in *l. Titium & Maenium alterum ff. de adminiſtr. tut. & in l. ſi patronus. C. comm. rer. iud.* alias fieri non poteſt vt dicatur inquiſitus pecunias alienas contrectaſſe niſi ſciret eſſe alienas. nam poſthabita [illegible] non poteſt conſiderari [illegible] quod [illegible] furtum committatur. ¶ Amplius dico, quod [illegible] confeſſus eſt [illegible] furtum commiſiſſe [illegible] confeſſio non [illegible] probari illum eſſe furtum in veritate commiſſum fuiſſe contra heredes Antonii Boxii puta probando [illegible] pecuniam [illegible] bonis & hereditate dicti Antonii [illegible] quod ipſe [illegible] heredibus [illegible] Antonii. Bald. in *d. auth. ſed nouo iure. colum. 3. C.*

de ſeru. fugit. Alexand. in *dict. conſ. 19. colum. [illegible] libro [illegible].* vbi dicit [illegible] quod nemo eſt dominus membrorum ſuorum [illegible] *l. liber [illegible] ad leg. Aquil.* & propterea non eſt [illegible] quod ſit delictum furti vbi non [illegible]. Tradit Roman. [illegible] *Pro deciſione. colum. 2. verſ. quintum id incidenter.* pulchre A[illegible] in *conſ. 22. de pœna. colum. fin.* [illegible] quod [illegible] non poteſt [illegible] per ſuam ſententiam facere delictum eſſe, vbi non eſt, ita etiam non poteſt hoc pars per ſuam confeſſionem. tradit idem A[illegible] in *conſ. 403. Formata fuit.* ¶ Igitur ad probationem delicti [illegible] dendum erat & articula[illegible] quo [illegible] inquiſitus ſciebat maiorem pecuniarum numerum fuiſſe Antonii Boxii, [illegible] quia illud didicerat ſeu intellexerat ab eius ſorore, vel [illegible] fuerat quando ſorori commiſſa fuerat ea pecunia, nam [illegible] tur reus quod pecunias non reſtituerit heredibus Antonii Boxii tanquam ad eos pertinentes: ergo probandum erat prius quod ſciret pecunias eſſe ipſorum heredum, quia non incurritur pœna ex facto negatiuo quod quis malefactorem [illegible] ceperit, prout [illegible] habetur ex forma ſtatuti, debet deduci [illegible] particulari quod ſciens non ceperit, & [illegible] quod ſciret maleficium eſſe commiſſum & etiam ipſum malefactorem intelligeret. [illegible] in *l. 1. colum. [illegible]. verſ. [illegible] ordo ponitur quæ crimina Cod. qui accuſa. non poſſ.* ſequitur Ioan. de Anan. in *rubr. de accuſ. in fin.* tradit Dec. in *cap. 2. de except. & in conſ. 127. colum 2. in fi.* [illegible] in *conſ. 46. colum. 3.* [illegible] *per gloſſ. in l. ex maleficiis. §. longe mirum. ff. de actione [illegible] obligat.* quam dicit anteam Bald. in *d. l. 1. C. [illegible] non poſſ.* ¶ Simile videtur [illegible] quod ſi agitur contra emphyteutam ad priuationem iuris ſui ob alienationem rei ſine conſenſu domini: nam probari debet ſcientia quod ſciret tenere [illegible] emphyteuticam. Baldus in *cap. 1. §. ſi vaſallus feudum in fi. tit. ſi de feud. fuer. controu. inter domin. [illegible]* Decius in *dict. conſ. 328. colum. fin.* ¶ Quin imo ſi ab alia perſona intellexiſſet [illegible] pecunias eſſe Antonii Boxii aut eius heredum, illud ſatis non erat obligaretur vt pecunias reſtitueret non probato iure heredum Antonii Boxii. *argum. l. qui accuſare C. de edm.* etenim præſuppoſito quod Auguſtina ſoror non mandaſſet vt pecunias reſtitueret [illegible] illa pertinebat ad ipſum inquiſitum poſt mortem ſororis veluti eius heredem, vel ſi liberos heredes reliquit, reſtituenda erat ipſis liberis heredibus, neque fides habenda erat dicentibus pecuniam alienam eſſe citra probationem. *gloſſ. in l. 1. ff. ſi quadrup. pauper. fec. dic.* Et ſi ipſimet heredes Antonii Boxii hoc dixiſſent, cum in cauſa propria credendum non erat niſi aliter probaſſent. *l. omnibus. Cod. de teſtibus. cap. in omni negotio. extra eod. tit.* alias impune poterat ipſi inquiſito cui pecunias tenere [illegible] iniuſſu [illegible] mandatum heredum ipſius Auguſtinæ, conſequenter eandem pecuniam bis reſtituere fuiſſet compulſus contra regulam. bona fides non patitur. *ff. de reg. iuris.* Facit quod dicimus, † non eſſe credendum aſſerenti ſe procuratorem alicuius, niſi mandatum doceatur, Baldus in *l. qui abſentem in 2. not. ff. de procur. & in l. de pupillo §. qui procuratorio. [illegible] ff. de ope no. nun.* alleg. at. *l. ſi pars inficiatur. ff. de pe in.* imo credens aſſertioni eius qui dicit ſe procuratorem alterius, & propterea contrahens cum eo tanquam cum procuratore, mandato alter non probato, dicitur eſſe in mala fide & dolo. *l. fin. ff. pro empt.* per quem text. ita dicit Bart. in *l. cum vir. circa fin. ff. de vſucap.* Alexand. in *conſ. 35. colum. 2. verſ. alia ratione. libro [illegible].* Corn. in *conſ. 269. colum. 1. libro 1. & in conſ. 2[illegible]5 colum. 2. libro 3.* ¶ Facit quod ſcribit Paul. de Caſt. in *conſ. 148. Viſo & ponderatis omnibus. colum. 12.* quod emens a prodigo non dicitur in mala fide eo quod fuerit dictum fuiſſe emere [illegible] etiam adminiſtrationem bonorum niſi talis denunciatio facta fuiſſet legitime, puta per iudicem aut oſtenſis actis. ¶ Fortius voluit Bald. in *conſ. 295. ſicut v. [illegible] colum. 2. libr. 1.* quod fama ſeu rumor viciniæ non inducit malam fidem, tenetur cum [illegible] credere [illegible] rumori, quando minus dicitur inquiſitus in mala fide cui denunciatum non reperitur & minus probatum quod iſtæ pecuniæ eſſent alienæ.

Amplius etiam principi non videtur credendum in facto ſuo proprio & ad [illegible] vt [illegible], puta ſi dicat caſtrum [illegible] ad ſe pertinere niſi aliter [illegible] *conſ. 2[illegible]. in [illegible] verſ. præmiſſa. in 2. dub. de quo latiſſime [illegible] in conſ. 225 colum. penult. poſt med. & [illegible] ſi. & in conſ. 171. colu. 3. verſ. poſtremo.* ¶ Amplius ſi [illegible], quod illa pecunia fuiſſet tenuis [illegible] Boxiorum Auguſtinæ. non videtur ſatisfacere vt inquiſitus dicatur furtum commiſiſſe, nam illa pecunia fuerat [illegible] apud Auguſtinam ex mandato Boxii tanquam cuſtodientem vt dicit pars, ergo ſi Auguſtina eandem pecuniam non remiſit ipſi inquiſito, illa remittente vel remittentis heredibus

dibus erat reſtituenda, nec permittitur referre quæſtio [illegible] min-
mum etiam ſi deponens furto eandem ſubtraxiſſet. Bar. Bald.
& Sal. *in l. ſi quis. C. depoſ.* Bertach. *in 1. parte repertor. in verbo. Depoſita-
rius. verſi. 34.* niſi & ſi Auguſtina mandaſſet pecuniam reſtitui
heredibus Boxii, conſequenter vltra probationem ſcientiæ,
neceſſaria erat probatio mandati, id eſt quod Auguſtina man-
daſſet ipſi inquiſito vt reſtitueret pecuniam heredibus Boxii,
alioquin fieret abſurdum, quod ſi habeo rem alienam titulo
commodati vel depoſiti à non domino, quod ſtatim tenear e-
am reſtituere vero domino alias furti reus efficiar. Plane, quan-
do commodatarius vel depoſitarius rem alienam habet ex volunta-
te domini & eam bona fide alteri committit, ceſſare videtur o-
mnis furti ſuſpicio, nec ſecundus depoſitarius furti videtur ob-
ligari, ſi contra formam mandati, ſi probatum, rem alienam a-
pud ſe [illegible] præter voluntatem domini, quoniam tenetur re-
ſtituere deponenti vel commodanti niſi aliter à iudice præce-
ptum, poſt [illegible] pleta probatione quod pecunia ſit alterius quã
deponentis *textu no. in l. bona fides. ff. depo. & in auth. ſed iam cautum. &
l. pen. C. depoſi.* maxime, quia licet ſciam pecuniam [illegible]
deponenti ab alio commiſſam, tamen contingere [illegible] poſt-
erint inter primum & ſecundum deponentem cui primo de-
ponenti reſtitui eam non oporteat, ubi agendum videbatur
ad reſtitutionem depoſiti vel contra heredes Auguſtinæ depo-
ſitariæ, aut certe agendum ciuiliter tantum contra inquiſitum
& probandum quod pecuniæ remiſſæ ab Auguſtina [illegible]
[illegible] eiſmet quæ fuerant commiſſæ ad cuſtodiam ipſius
Auguſtinæ per Boxium, vt late probauimus in prioribus [illegible]
[illegible] autem criminalis omnis [illegible] oportebit, ſiquidem
[illegible] conſiderari non poteſt in ipſo inquiſito, in quem verba
[illegible] furti omnino non conueniunt, ſed cõſtat liberum
hominem non torqueri de cauſa ciuili quemadmodum conſi-
lus [illegible] nolatum fuit. ¶ Ex quibus conſequenter videtur
declarationem *ad c. 1. extra de depoſ.* eſſe omnino veram & neceſ-
ſariam vt liber homo demum torqueatur in cauſa ciuili, cui in-
4 cidit crimen, ſi probetur prius delicti ſubſtantia, nam ſi [illegible] in
cauſa mere criminali ad torturam non deſcenditur niſi de delictũ
plene conſtet, ſupra notauimus, & tradit in [illegible] tortura
Marſil. *in [illegible] in prin. nu. 5. & in l. ſi quis ne quæſt. nu. 189. ff. de quæſt.* multo
magis idem probandum eſt in cauſa ciuili quando crimen
incidenter proponitur. Cõfirmatur hoc ratione naturali, nam
quotium attinet quærere per tormenta quantam pecuniam
[illegible] furtum [illegible] niſi probetur ante omnia furtũ eſſe com-
miſſum tanquam fundamentum & ſubſtantia totius cauſæ?
Amplius, etiam quod confeſſio ſpontanea ſuper delicto, non
noceret niſi conſtet delictum eſſe commiſſum, ideo non
noceret [illegible] quod homicidium commiſerit, niſi conſtet
de [illegible] & de corpore occiſi: ſimiliter nõ noceret con-
feſſio [illegible] niſi prius conſtet furtum eſſe commiſſum.
Bal. *in [illegible] colum. 2. verſi. ſed pone quod quis confitetur. C. de
ſervis [illegible] Ang. [illegible] certum in prin. ff. de conf.* Alexand. *in conſil. 1[illegible]
colum. 1. lib. [illegible]* M[illegible] *in [illegible] Kal. ſarum § pen. num. 6.* ſuum autem no-
mine [illegible] inquiſitus torqueri vt pandat quam iterum
pecuniam [illegible] iudicium accuſationis ab heredi-
bus Auguſtinæ [illegible] contra inquiſitum, ſiquidem ver-
ba [illegible] compere tunc demum videretur [illegible] vel
ſaltem [illegible] Auguſtinæ mandaten inquiſito vt pecunias
reſtitueret heredibus Boxii confitendo ad eos illa pertinere,
tunc [illegible] heredes Boxii iudic[illegible] nale furti nomine
[illegible] poſſet, alias iuſta videtur excuſatio negantis reſtituere
de [illegible] quam deponere ſupradicta & prius o-
mnibus declarandum erat à iudice pecunias eſſe heredum An-
tonii Boxii & ad eos pertinere & obligari inquiſitum ad reſti-
tuendum ipſius heredibus. nam habita eiuſmodi declaratio-
ne tunc demum vitioſa videtur retentio alienæ pecuniæ, ſed e-
nim ante eiuſmodi declarationem furti vitium non argui po-
teſt. arg. eorum quæ ſcribit Cornel. *in conſil. 296. colum. 6. verſi. 2. re-
ſpondetur [illegible] lib. 3.* vbi iuſſus reſpondere poſitionibus, ſi dicat
non eſſe reſpondendum, ita demum fit contumax, & poſitio-
nes pro confeſſis pronunciantur, ſi declaratum fuerit à iudice
eis [illegible] reſpondendum, quia oportet prius conſtare
[illegible] & antecedens neceſſarium ſine quo con-
ſequens [illegible] eſſe non poteſt. Bald. *in l. iuramenti. alam. [illegible] 3.
C. de [illegible] & in l. ſi homo mortuus.* & ibi Iaſo.
ff. de verb. oblig. ¶ [illegible], licet pœna committat ipſo iure
propter delictum ſine alia ſententia declaratoria, requiritur

tamen ſententia declaratoria ſuper ipſo delicto, per quam cõ-
ſtet delictum eſſe commiſſum parte citata & cauſa cognita.
clem. 1. iuncta gloſſ. penult. de poenis. item ſimul. vt per Socin. *inter conſil.
Curt. ſen. in conſil. 20. colum. 11. in fin. & colum. 14. in princip.* vbi etiam
allegat bonum text. *in c. parochianos.* vbi Abb. *de ſenten. excomm.*
¶ In propoſito, inquiſitus cum dixerit pecunias Boxii non ha-
bere niſi ad modicam quantitatem, alias autem pecunias acce-
piſſe tam quam proprias Auguſtinæ vel eius mariti, probandum
erat quod [illegible] aliæ pecuniæ omnes ad Boxium pertinebant, & i-
ta à iudice declarandum & mandandum vt reſtituerentur, ali-
as impoſſibile eſt ex regulis & rationibus iuris furtum commit-
ti [illegible] nullus teſtium hoc dixit, nec iudex idem declarauit quo-
modo [illegible] declarare poterat citra præſtationem probationum,
[illegible] omnino tacere oportet. ¶ Et præmiſſæ con-
ſiderationes referri poſſunt ad ſingulas dubitationes, quia ſub-
[illegible] principali, id eſt, quod furtum admitti non potuerit, nec
[illegible] ideo impoſſibili, ſequelæ omnes & omnia neceſſaria la-
bi [illegible] *regula cum principalis. ff. de reg. iuris.* tamen in ſpecie ad ſin-
gula reſpondemus. Et primo ad teſtimonium Sebaſtiani Cha-
ranghie [illegible], quod non eſt omni exceptione ma-
ior, quia eſt pauper, vilem artem exercens, quæ [illegible] repellit
à teſtimonio. *l. ob carmen § 1. ff. de teſtib. § ſi ver[illegible] in auth. de Sor.
& ſal. id* Feder. de Senis *in conſil. 210. Veritatis columna 1 verſu item
Bartol.* Bart. *in l. ex libero ff. de quæſt.* Anchar. *in conſil. 64. In cauſa quæ
vertitur inter Philippum. colu. 3. circa med. in conſi. 127. Ad corroboratio-
nem colum 3. ante med.* Aret. *in conſil. 71. ad fin.* Dec. *in conſil. 1[illegible] colum.
3. ad fin.* [illegible] detrahit [illegible] vilitas perſonæ de fide teſtis. licet
omnino non repellat Bald. *in l. fin. qui teſtium de teſtibus.* vbi quod
non dicitur teſtis omnino integer. ſequitur Alexand. *in conſilio
131. in [illegible] in conſi. 1[illegible]6. columna 2. poſt med. lib. 6.* & hoc niſi vi-
litas [illegible] ex malis moribus aut ex mala fama, quia tunc
ſimpliciter videtur repelli Bald. & Alexand. *in d. locis.* Anchar. *in
d. conſ. 64. in d. conſ. 127. colum 3.* Alexan. *in conſ. [illegible] colum 3. verſ. nunc
dicendum lib. 5.* Dec. *in conſi. 134. colum. 3. in fin.* Socin. *in conſ. 1[illegible] co-
lum. penult. in fin.* & licet non procedat vilitas ex mala fama, mi-
nus tamen probaret teſtis vilis in cauſa criminali [illegible]
dua [illegible] ¶ Paupertas etiam fidem diminuit, quia pro-
pter inopiam multi deliquerunt ſecundum Eccleſiaſticum,
quem refert Anch. *in conſ. 157. Summa prudentiæ. colum. 2. ad fin.* quod
maxime obtinet in cauſa ardua & criminali. Anch. *in conſil. 194.
In cauſa & quæſt. Ioannis colum. fin. circa med.* imo teſti pauperi non vi-
detur credendum in cauſa criminali, niſi cum tormentis quã-
do paupertas eſt magna. Iac. Butr. *in l. 3. in prin. ff. de teſtib.* Alexand.
in conſil. 131. in fin. & in conſil. 237. colum 1. [illegible] de
tormentis non admitterem niſi in paupere [illegible] famæ & te-
ſtimonio valde pauperi, ter perſonam [illegible], cuius ſit fa-
mæ & conditionis, nam contra reum diffamatum pauperis te-
ſtimonium alias vitæ honeſtioris admitterem. quæ ipſa res iu-
dicis recliſſimi arbitrio ſere committitur. ¶ [illegible] teſtis
depoſuit alternatiue ex quo teſtimonium eius fit obſcurum &
nullum. *l. prætor edixit. § quo autem ff. de iniur. [illegible] de prob.*
Aret. *in conſil. 122. In præſenti conſultatione colum. 2. poſt med. verſi. al
Item [illegible]* nam oportet teſtes firmiter & conſtanter
deponere. Alexand. *in conſil. 82. In cauſa & lite vertente inter prouin-
dum [illegible] colum [illegible] poſt med. lib. 4.* ¶ Quartum teſtimonium e-
ius deli[illegible] non concludit etenim non ſequitur, in-
quiſitum [illegible] cepit magnam pecuniarum quantitatem ab Augu-
ſtina [illegible], ergo ſciebat omnes pecunias pertinere ad Boxi-
um, quia nihil dicit monitum fuiſſe & certioratum inquiſitum
quod pecuniæ eſſent alienæ, vel mandatum fuiſſe eis reſti-
tueret, quod eſt neceſſarium furti vt ſupra oſtendimus. ¶ Circa
inditium variationis ſeu mendacii ipſius inquiſiti, duplex
fuit reſponſum in alio conſil. quod confeſſiones ſeu reſpon-
ſiones ipſius inquiſiti non ſunt contrariæ ſi ad rectum intelli-
gantur & ad cõcordiam reduci poſſunt, quod fieri debet la- 5
tem vt falſum vitetur. Iaco. Butr. *in l. cum de ætate. ff. de proba. & in
l. optimam. C. de contra. & comm. ſtipulat. cum ſimil.* quæ Alexan. ſcribit
in conſi. 199. coln 1. lib. 7. quinimo dictum vnius reducitur ad con-
cordiam etiam vt probet, ſi contrarietas non ſit manifeſta. Ale-
xan. *in conſil. 13[illegible] viſo proc[illegible] colum. 2. verſ. quinimo videntur lib. 1.* [illegible]
dictis [illegible] quod non reducatur ad concordiam vt pro-
bet licet contrarietas non ſit manifeſta, voluit idem Alexan. ſi-
bi contrarius *in conſi. 80. colum 3. ante med. verſi. non reducitur lib. 2. in
conſi. 20. colum 1. poſt med. in conſi. 43. colum. 4. & in conſi. 19. colum. 3.
ante med. libro 7.* ¶ Secundo reſponſum fuit eiuſmodi variatio-

nem non eſſe circa ſubſtantialia, ideo non nocere. Alex. in *conſ.* 10. *colum.* [illegible] *vers. item non obſtat ſi dicatur. lib.* [illegible]. Aretin. *in conſ.* 60 *Excellentiſſimus Doctor. colum.* 4 Dec. *in c. licet cauſam colum.* 15. *de proba.* Iaſ. *in l. ſi quis nec cauſam colum.* 4 *ff. ſi cert. pet.* & alibi ſæpe [illegible] Doct. Aduerte tamen quia teſtibus variantibus circa accidentalia, minus creditur. Bald. in *l. ſi ex falſis. colum. fin. Cod. de tranſactio.* Dec. in *conſ.* 105. *colum. pen.* & hoc niſi eſſet variatio circa verba, quia ſi tendant teſtes ad eundem finem, magis probant quam ſi deponerent per eadem verba. Alexand. in *conſ.* 105. *colum. penult. in fi. lib.* 4. Iaſ. *in l.* 1 *colum.* 5 *in fi. C. de bon. poſſeſſ. ſecundum tabul.* ¶ Tertio
6 poteſt reſponderi † quod variatio conſideratur quando eſt doloſa non etiam ſi ſit errore, pulchre Anch. in *conſ.* 361. *Viſa plene facti narratione colum.* [illegible] *ad fin.* ſed præſumitur error etiam in facto proprio ob temporis diuturnitatem. *l. peregre ff. de acqu. poſſeſſ. gloſ. in l. furtum* §. *fin. ff. de vſucap.* vbi quod iudex arbitrari poteſt inductam eſſe obliuionem memoriam ex diuino tempore decem annorum: & illam gl. dicit communiter approbari Alber. de Roſa. in *l.* 1. *Cod. de ſeruis fugit.* Socin. in *conſ.* 3. *ante med. libr.* 5 porro inquiſitus interrogabatur de facto longioris temporis ¶ Præterea inuenit ipſe integri nominis, cauſarum criminalium neſcius, horrore quodam ſtupebat, vt non mirum ſi variare dicatur circa aliquas circumſtantias. ¶ Quarto etiam reſponſum fuit non fieri indicium ad torturam ex ſola variatione ¶ Quinto reſpondeo ex variatione indicium ad torturam fieri non poſſe, niſi prius conſtet commiſſum eſſe flagitium furti, vt ſupra oſtendimus ¶ Circa indicium famæ, reſpondeo primo quod probatio
7 famæ non videtur impleta, primo quia oportet famam oriri ex cauſis probabilibus & veriſimilibus. Bald. in *l. properandum. Cod. de pr* [illegible] Aretin. *in conſ.* 65 *colum.* 4. *ad fi. verſ. nec fama.* ideo teſtis deponens ſuper fama debet deponere de ipſis cauſis veriſimilibus, ex quibus fama ortum habuit, alias non probat, nam debet fama ſubnixa eſſe aliqua coniectura idonea non leui & nuda. Bald. in *conſ.* 1: 2. *Verum dictus pro.* [illegible] *colum.* 2 *lib.* 3. Iaſ. *in conſ.* 167 *colum. fin. libro* 4. fama enim probata ex ſola voce populi ſine aliqua præſumptione legitima, ex quo originem traxerit, dicitur vana vox populi, quæ audienda non eſt. *l. decurionum. C. de pœnis.* Bart. in *l. de minore.* §. *plurimum. colum. fin. ff. de quæſtio.* Iaſ. in *conſ.* 2. *colum* 10. *in fin. libro* 1 & ibid. Iaſ. quod fama ſola eſt quoddam ſomnium & quidam rumor, qui ſæpe à veritate diſcordat ſecundum Bald. in *c. vigilanti col.* 2 *de præſcrip.* & tradit idem Iaſ. in *conſ.* 78. *colum.* 4. *lib.* 3. plene orta eſt fama propterea quod fratres de Becbis erexerunt apothecas, quæ cauſa non eſt probabilis quoniam lucrari quilibet præſumitur de proprio non etiam de alieno *l. ſi defunctus C. de arbitr. tute.* & abunde notatum fuit alio conſ. ¶ Rurſus ipſa fama dicitur irrationabilis orta ex cauſa à iure improbata. Aretin. in *conſ.* 44 *colum.* 2. *verſ.* [illegible] *iſta conſiderando.* Secundo probandū erat illam famam originem habuiſſe à perſonis fide dignis, & probanda qualitas fideī, id eſt, quod tales perſonæ eſſent fide dignæ. Arch. in *com.* 253. *In quæſtione presbyter. colu.* 2 Dec. in *conſ.* 75 *colum.* 1 *circa med.* Alibi ſcribit Bal. in *conſ.* [illegible] 4. *In cauſa Ludouici Ma* [illegible] *lib.* 2 quod ſtante ſtatuto, probatio per famam vel [illegible] fama eſt multum præiudicialis, debet cōſtare quod originem habuerit à perſonis diſcretis & non ſuſpectis ex cauſis veris & probabilibus. ¶ Tertio reſpondetur neceſſarium eſſe ad probationem famæ nominare perſonas à quibus fama originem habuerit, licet teſtes interrogati non fuerint, Angel. *in l. ſolam C. de teſtibus & in l. ea quidem colum.* 3 *C. qui accuſ.* Dec. in *conſ.* 37 *col.* 3. *& in conſ.* 57 *circa med. & in conſ.* 575. Quinimo ſi teſtis interrogatus à quibus dici audierit, nominet duas perſonas, deinde ſubdat quod dici audiuit a multis aliis non probatur fama, quia iſtud verbum multis aliis, verificari poteſt in duob. Bald. in *conſ.* 447. *Ad euidentiam præmittendum eſt quis dicatur vſurarius manifeſtus. colum. pen. lib.* 5. quod dictum pro notabili, refert & ſequitur Iaſ. in *l. licet imperator. colum.* 4. *verſ. item adde. in practica de leg.* 1. Idem voluit Corn. in *conſ.* 127 *colum. fi. & in conſ.* 126. *colum.* 1 *ad fin. lib.* 4 ¶ Quarto reſpondeo quod erat probandum tempus famæ, id eſt, quod iſta fama fuerit vita ante litem inchoatam, quia potuit ſtatim naſci iſta fama poſt capturam ipſius inquiſiti ex eo quod fuit dictum & diuulgatum quod fuerat captus propter pecunias Antonii Boxii, quo caſu facile eſt naſci rumorem in loco apud omnes quærentes de cauſa capturæ ita in materia delicti ad probationem famæ reſpondet Anchar. in *ead. conſ.* 253 *col.* 1. Alex. *in conſ.* 100. *colum.* 2. *ante med. verſ. & dato quod aliquis lib.* 2. Aret. in *in conſ.* 122. *col.* 1. Corn. *in conſ.* 198. *col.* [illegible] 2. *in conſ.* [illegible] 5. *colu.* 4. *& in conſ.* 315. *colum. fin. lib.* 4. Veroncnſis in

conſi. 1 *in fi. & in conſi.* 31. *colum.* 4. *in fi.* ¶ Nec † ad probationem famæ deferri poteſt iuramentum ſuppletiuum. Bart. *in l. admonendi ff. de iureiu.* Aret. in *conſi.* 81 *colum.* 1 *circa med. & in conſi.* 13: *colu.* 2. Deci. in *conſi.* 17. *ad fi.* ¶ Quinto reſpondeo famam non ſufficere ad torturam, veluti probatum fuit in conſiliis Aret. in *conſi.* 13. *colum.* 7. ¶ Sexto reſpondetur ex iſta fama nihil inferri poſſe ad crimen furti, quia non ſequitur: fratres de Bechis apothecas inſtruxerunt de pecuniis Boxii, ergo furtum commiſerunt, quia deficiunt extrema neceſſaria ad probationem furti: nam poſſunt diuites fieri per alienam pecuniam, citra tamē vitium furti, puta ſi ex fide bona ad me peruenerit & ceſſet furādi animus vt hic oſtendimus. concluderet autem fama furti flagitiū ſi fama eſſet Auguſtinam ſororem mandaſſe inquiſito pecunias vt reſtitueret heredibus Antonii Boxii & ipſe negaret. ¶ Septimo reſpondetur fruſtra tractari an ex fama fiat indiciū ad torturam in crimine furti niſi prius doceatur furtum eſſe cōtractum ſeu commiſſum, vt ſup. docuimus. ¶ Octauo reſpondetur, licet fama eſſet pecunias eſſe Antonii Boxii, non ob id credere oportebat eiuſmodi famæ & ad eius rumorem pecunias reſtituere niſi aliud probaretur ab heredibus Boxii, vel [illegible] heredes Auguſtinæ aut ipſa Auguſtina teſtimonium fieri mandaſſet ex his quæ ſupra ſcripſimus. Et pro hac octaua reſponſione faciunt quæ in propoſito famæ ſcribit Corn. *in conſi.* 35 *col. penult. & fi. lib.* 1 *& in conſi.* 50. *circa fi. lib.* 2. Dec. Neapol. *dec.* 18 [illegible] quod non ſequitur, fama eſt rem ad talem pertinere, ergo [illegible] in emendo vel poſſidendo dicor eſſe in mala fide, puta ſi emo ab eo qui habet tit. & quia verbum pertinere poteſt intelligi diuerſis modis vt ibi no. in propoſito cum inquiſitus accepiſſet pecunias à ſorore, non ita de facili debebat credere famæ vt poneret ſe in diſcrimen his ſoluendi vel litigandi. ¶ Ad argumētum quod fit ex communiter accidentibus, reſpondeo, quod Auguſtina confuſa perturbatione peſtis, non potuit ad plenū omnia explicare *arg. tex. in l. hac conſultiſſima.* §. *ex imparibus ma fragilitas. C. qui teſtam. facere poſ.* ¶ Secundo reſpondeo, quod aſſignando ſeu dimittendo pecunias fratri ſimpliciter citra expreſſionē cauſæ ſatis videtur indicaſſe quid de ea fieri vollet, quia cenſetur tradita ex cauſa depoſiti non facta numeratione glo. Bart. & Doct. in *l. cum quid. ff. ſi cert. pet.* Alex *in conſ.* 28 *colum.* 1. *verſ.* 3. *reſpondeo, lib.* 7 Deci. *in l.* 2 *in prin. col. pen. ff. ſi cert. pet.* ¶ Tertio reſpondeo, quod Auguſtina mandauit ſaltem tacite, quid fieri vellet pecunia Ant. Boxii, nam loquendo & monendo illam partem pecuniæ fuiſſe Anto. Boxii in diſcrimine mortis, ſatis videtur mandaſſe pecunias domino reſtitui ¶ Quarto torquetur argumentum, nam ſi tradens pecunias [illegible] communiter accid[illegible]tibus conſueuit dicere quid fieri de eis vellet, ergo nihil aperiendo quod omnes pertinerent ad Ant. Boxii vel eius herede[illegible] tacite videtur intellexiſſe quod eſſent ipſius Auguſtinę: nam ſi omnes fuiſſent Ant. Boxii, vtiq; de omnibus dixiſſet, veluti dixit de parte earum. *l. vn.* §. *ſin autem ad deficientu. C. de cadu. toll.* præſertim cum eſſet in diſcrimine vitæ, veriſimiliter memor ſalutis æternæ, *iuxta not. in l. ſi quis in graui.* §. *ſi quis mortem. ff. ad Syllania. facit text. in l. fin. C. ad leg. Iul. rep. & l. merito. ff. pro ſo.* ſed nullus teſtium dicit Auguſtinam dixiſſe quod pecuniæ eſſent alienæ, vel quod reſtituerentur aliis perſonæ, ergo arguendo ex communi conſuetudine Chriſtianorum mortis periculo laborantium, præſumendum eſt memoratas pecunias non fuiſſe omnes Antonii Boxii. Non obſtat quod fieri videtur indicium ſaltem ex omnibus ſimul iunctis, quæ coniunctio fit etiam in criminalibus quo ad iudicium ad torturam, quia plures probationes ſemiplenæ etiam diuerſi generis coniunguntur vt fiat indicium ad torturam. Salic. in *l. ea quidem. col. pen. verſi. ſed finge. C. de accuſ.* Soci. *in conſi.* 54. *col.* 2 *verſi.* 3. *& vlt. lib.* 3. Iaſ. *in rep. l. admonendi. nu.* 157. *ff. de iureiuran.* quod etiam voluit Bart. *in l.* 1. *ff. de quæſt.* vbi Bart. quod in materia indiciorum vna præſumptio iuuat aliam. quod Bart. dictum ſequitur Alex *conſi.* 77. *col. fi. lib.* 1. quia reſpondeo, illud procederet quando ſingula indicia eſſent perfecta in genere ſuo, & ſingula ad plenum probarentur Bald. in *l. ſi quis ex argentariis.* §. 1. *ff. de eden.* Bartol. & Doctor. in *l. admonendi ff. de iureiurando.* Alexand. in *conſi.* 180. *colum.* 3. *lib.* 2. Hippol. *in pract.* [illegible] §. *diligenter. nu.* 12. *& §. quoniam. num.* 31. ſed ſingula indicia ſi [illegible] animaduertantur & ſcripta in cauſa accurate conſiderentur nullum id genere ſuo eſt plene probatum. ¶ Præterea à ſufficienti partium enumeratione arguitur non eſſe locum torturæ: etenim aut vis torquere vt manifeſtetur numerus pecuniarum, & iſtud nihil releuat, quia nō ſequitur, accepit ampliorem pecuniam ab Au- 8

guſtina

3

guſtina ſorore [illegible] furtum cõmiſit, cum [illegible] p[illegible] A[illegible] pbeni[illegible] eſſe aliena [illegible] ſupraabunde [illegible] batio [illegible] per torturam quæ non [illegible] tionem.C.de pro. [illegible] probatio quæ non [illegible] tur, [illegible] quido [illegible] ſtatur de probatione per tor[illegible] quæſtio [illegible] de [illegible] ndatur, aut deſid[illegible] pecuniæ acceptæ eſſent [illegible] & [illegible] leuatura tormenta, qu[illegible] an ſciret [illegible] pecunias eſſe alienas, nulla [illegible] in [illegible] iuſtificarent tortu[illegible] nt[illegible] Bal. [illegible] Cod. de accuſ. Bar. [illegible] Do[illegible] l mariti. ff. de [illegible] A[illegible] in prati[illegible] quaſt. numero 2. & [illegible]

¶ [illegible] inquiſit [illegible] medio [illegible] famam [illegible] & [illegible] Marchionatu S[illegible] pecunias à [illegible] acceptas [illegible] pecunias alien[illegible] & [illegible] fecit [illegible] per contrarium [illegible] præſum[illegible] ptio excluſ[illegible] quando quis non [illegible] contr[illegible] eadem ſit diſciplina *Inſti. de his qui ſunt ſui vel alieni iur. l quod in r[illegible] §. ſi quid poſt [illegible] tra ff. [illegible]* deinde operetur oppoſitum in oppoſito, quod propoſitum in propoſito *l ſin. in prin. ff. de [illegible]*. Imo [illegible] debet in [illegible] ſumptio in fauore [illegible] inquiſiti ex eo quod non fuit [illegible] ea in præſumpto [illegible] propter fugam, cum præcedant probationes per quas cunctatur d[illegible] & d[illegible] deponente de Bonmate [illegible] bus [illegible] Abb. [illegible] *de teſtibus*. Anch. in *conſ. 217* [illegible] Co[illegible] 119 [illegible] Doct. Bar. in l non ſolum §. [illegible] Alex & Moder. [illegible] *ff. de ope. nou. nun. cum ſimil.*

¶ [illegible] videtur nulla [illegible] habendi [illegible] quæ [illegible] cuius libet mo maiori ornamento [illegible] iudici, quam condemnatio. Paul. de Caſt. in *conſ. 299.* [illegible] nis Iudex cum ſe præſtet in quem Anchar. [illegible] *conſ. 24.* [illegible] quod ipſam [illegible] cõtra [illegible] reddere [illegible]

¶ Tortus [illegible] Rotæ Bononienſis & [illegible] Armandus [illegible] Do. Aymo [illegible] Ca[illegible] lacrymoſo [illegible] biennium [illegible] potuisſe [illegible] ¶ Deinde [illegible] detet, in vrbe [illegible] 1538. m[illegible] Aprilis, vbi [illegible] publicationis [illegible] quæ ipſi tamen pondus [illegible] habuit. Aymo C[illegible] ex Sa[illegible] I.V.D.

SVMMARIA.

1 *Non ſolum curator, ſed etiam extraneus poteſt acceptare pro adulto, [illegible] tantum [illegible] potuit [illegible] ratio.*
2 *[illegible] eſt mandatum, ratificatio neceſſaria non eſt.*
3 *[illegible] curatoris, quam procuratoris.*
4 *Ra[illegible] induci [illegible] ex eo, quod res occupata ad alium perueniat.*
5 *Ex ſola [illegible] ſit acceptatio donationis.*
6 *Qui contra donatorem poſt factam prohibitionem ad mandatũ principis præſumitur in mala fide.*

CONSILIVM CCLXI.

Pro nobili domino Iaffredo Armitani Burgenſe Villafranchæ artium & medicinæ ſcholari.

DIVINO ſubſidio ex corde poſtulato. Probatur mihi ſententia domini Nicolai Gambeux, collegæ honorandi, id cuius confirmationem ſubnectimus [illegible] non ſolum curatorem
1 poſſe acceptare pro adulto, verum etiam extraneum [illegible] co[illegible] facta abſente parte [illegible] ante, quan do [illegible] acceptatum, dummodo [illegible] ratio. [illegible] And. in *addit. Specul. [illegible] de conſtit. [illegible] confitetur tuam eſſe.* Anto. de Butr. in [illegible] quirtur

A[illegible] *Debenter [illegible] & in conſil. 83.* [illegible] A[illegible] D[illegible] A[illegible] *idem in duobus* [illegible] *poſt* [illegible] *Caſt. in conſil.* [illegible] & [illegible] addunt [illegible] *& [illegible]* quod [illegible] allegat [illegible] *Bart. in l. qui mihi donatum ff. de donatio.* Requiritur [illegible] accep[illegible] expreſſa, qu[illegible] Caſt. [illegible] *quod [illegible]* [illegible] *not. in [illegible]*

[illegible] accep[illegible] *[illegible] eum ſimil.* [illegible] pro [illegible] ceptatio [illegible] ex quo, vt [illegible] non eſt, imo mandatum [illegible]
2 ſicut [illegible] Alex. in *conſ. 12. ad fi.* [illegible] cœperit acceptatio curatoris quam [illegible]
3 ne, quia curator [illegible] eſt, procurator [illegible] acquiritur [illegible] actio [illegible] dominium [illegible] *creator* [illegible] ¶ Secundo [illegible] quod iſta [illegible] verb. [illegible] *hab. [illegible]* [illegible] gata [illegible] legitimum [illegible] *conſil. 45 [illegible] ante med.* Similiter [illegible] ditor [illegible] nam [illegible] de [illegible] bitorem [illegible] editorem, cenſetur hypothecam [illegible] *l. Pomponius. §. ſiu ff. quibus [illegible]* & petens terminum ad ſoluendum, videtur [illegible] præcedenter. Angel. in l *cauta [illegible]* dilationem ad ſoluendum [illegible] condemnatus, cenſetur approbare ſententiam [illegible] appellatione non [illegible] *ad ſolutionem. Cod. de reiud.* [illegible] *extra.* [illegible] talis enim [illegible] ex[illegible] factis col[illegible] poteſt. *l. [illegible] fratres* [illegible] *C. de inſti. & ſubſtitut.* [illegible] voluntas inte[illegible] Albericus in l [illegible] præſum[illegible] & [illegible] minis [illegible] *ſin. ff. [illegible] pupilli* inueniat [illegible] ex hoc arguitur [illegible] bationem [illegible] ipſius [illegible] *lib.* [illegible] *[illegible] inprincip. lib. 2* Cornel. [illegible] Simile videtur [illegible] de [illegible] quod in [illegible] probatur [illegible] *de omn.* [illegible] & idem Bartol. [illegible] *rerum* [illegible] bald. in *conſtitut. C. de* [illegible] ¶ Amplius [illegible] bus [illegible] ad eum pertinent [illegible] *nu.* Anton. de Butr. *in c. cum ad ſedem. [illegible] de reſtitut. ſpo[illegible]*

Paul.

[illegible] C. [illegible] in conf. 42. [illegible] colum. [illegible] [illegible]

[illegible] Dec. in consi. 58 [illegible] inquer [illegible] per [illegible]. ff. de reg. iuris. per q[illegible] um [illegible] donat [illegible] [illegible] in l. cum [illegible] 4. [illegible] versu. per hanc glos. [illegible] de mortuis [illegible] non potest, per [illegible] l. fin. ff. [illegible] cum [illegible] ¶ Terti[illegible] postea d[illegible] tionem & iu[illegible] do-miniu[illegible] translatu[illegible] tarios, ne[illegible] donator in alium tran[illegible]e, etiam ex pa[illegible] de retrouendendo, quia tempore [illegible] ditionis [illegible] iuris erat apud vendentem, reg. l. nemo plus [illegible] iuris. nec pactum de retrouendendo afficit tertium [illegible] de Cast. in consil. [illegible] Quamquam longa ad fin. lib. [illegible] in consi. [illegible] in consi. 12. colum. [illegible] lib. 6. alias [illegible] posse, agi posse ex pacto de reuendendo contra ter-[illegible], sed non simp[illegible] pacto [illegible], sed ratione hy-po[illegible], quæ tribu[illegible] ¶ Quarto addo † quod ille, qui emit à donatore post [illegible] in prohibitionem ad mandatum principis [illegible] mala fide [illegible] C. de rei vendic. argu-[illegible] §. si quis [illegible] Bart. & Alexand. ff. de his qui [illegible] contra [illegible] lib. 6. Con-firm[illegible] fundamentum, [illegible] legis dicitur in dolo. [illegible] Quæst. [illegible] pactum colum. 1 [illegible] lib. 3. ergo multo [illegible] contractum, qui principis manda-tum [illegible], quia maior est [illegible] iudicis quam [illegible], grauius peccat non obediens iudici, qui in legi. [illegible] Dec. [illegible] colum. [illegible] in 19. [illegible] & [illegible] quod dicitur minus agit cum [illegible] ge, quam [illegible] omine. l. Cel[illegible] cum glo. [illegible] ob id [illegible] fide [illegible] [illegible] ratio secundum doctr. Bart. in l. ex di-uerso ff. de rei vend. ergo est dicenda sententia in fauorem ag[illegible], aduersus istos possessore[illegible] quæ adulto, id est, [illegible] Iaffredo Armitani donata fuerunt. Taurini, 9. Februarii. 15[illegible]

Aymo Crauetta à Sauiliano. I. V. D.

SVMMARIA.

1. [illegible] non potest ad inquisitionem, nisi præcedant indicia.
2. [illegible] debent esse [illegible] certa & specifica.
3. [illegible] generalis [illegible] & etiam in [illegible].
4. Confessio non potest facere dol[illegible].
5. Ex nomine, [illegible] haereticus, sed ex operibus contra fidem.
6. Inquis[illegible] de iure speciali.
7. [illegible] calumniam [illegible] ea, quæ proposita & obiecta non probat.

CONSILIVM CCLXII.

Pro Oberto Raymondetto inquisito.

DIVINO fob[illegible] Protestor me n[illegible] le causam agere alicuius hæret[illegible] plane [illegible] defensionem [illegible]

[illegible] mutata & certa debet esse [illegible] in quo agit [illegible] præiudicio. ¶ [illegible] hæreticus, non exp[illegible] causas [illegible] non conde[illegible] posset ex confessione, [illegible] probatur in eo, qui fatet[illegible] dium commisisse, nisi constet de deli[illegible], id est, de corp[illegible] [illegible] & in eo, qui fatetur furtum, nisi [illegible] betur furtum [illegible] missum. Ang. in l. certum in prin. ff. de [illegible] Bald. in auth. [illegible] colum. 2. ver. sed pone. quod. quæ conjectur [illegible] seru. fugit. Mat[illegible] [illegible] §. primo [illegible] tur, quem [illegible] num memb[illegible] [illegible] l. [illegible] homo. ff. ad leg. [illegible] [illegible] non præiudicaret tali [illegible] confessio, sum h[illegible] tur incerta & obscura, tanquam nimium generalis [illegible] causis, ex quibus confitens hæretic[illegible] ita B[illegible] Bertrandus de Cano. [illegible] quod est repetitum in con. 39 [illegible] [illegible] non præiudicat confessio, sum [illegible] generalis, incerta & obscura. Rursus, [illegible] non, aliquibus eius opinionibus, dici[illegible] consistit scilicet 20 tales opiniones, talia d[illegible] hæresim super quibus iura disponunt [illegible] confessio non præiudicat. [illegible] ff. de [illegible] Ideo si aliquis fatetur se furtum commisisse [illegible] se furtum fecisse, sit propria ipsius confitent[illegible] non præiudicat, quia non potest [illegible] conf[illegible] vbi de iure delictum cessat. Roman. in con[illegible] [illegible] quinimo [illegible] Amp[illegible] quod talis res esset propria confite[illegible] adh[illegible] præiudicaret, quia debet prius apparere [illegible] se commissum, puta, mittendo [illegible] [illegible] in l. auth. [illegible] C. de [illegible] fugit. Alexan[illegible] [illegible] 7. ¶ [illegible] si quis fatet[illegible], omnia [illegible] contra [illegible], esse [illegible] non [illegible] tum non [illegible] iudex [illegible] per sententiam [illegible] immutare per suam [illegible] mandat ad de[illegible] [illegible] 22. De pœnis. [illegible]

[illegible]

... Sauliano. I.V.D.

SVMMARIA.

1 Exce[illegible] de ap[illegible]
2 [illegible]
3 [illegible] in qua lis proceditur, ola facti veritate [illegible] agitur [illegible] contra [illegible]
4 [illegible] ſola [illegible] iuſta ſunda[illegible]
5 E[illegible] ante litem conteſtatam.
6 Exceptio[illegible] natura [illegible]
7 [illegible] creditoribus, tanquam [illegible]

CONSILIVM CCLXIII.

Pro vniuerſitate C[illegible] Marchionatus Salutiarum contra magnificum dominum Iacobum de S. Iuliano

DIVINO ſubſidio ex corde poſtulato. Agit magnificus dominus Iac. de S. Iuliano, contra vniuerſitatem C[illegible] ad conſecutionem legati ſcutorum [illegible] Marchione Saluciarum [illegible] ex cauſa & titulo donationis. Excipitur, quod prius conueniri debet [illegible] Marchio, tanquam [illegible] teſtatoris. Quæritur quid iuris, & an cenſeatur reiecta talis exceptio per [illegible] Marchionis, quo mandatur cauſam [illegible] veritate inſpecta. In propoſito caſu conſuluit ſocer quondam meus Purpuratus, & deinde poſt eum dom. [illegible] doct. Nouarienſis, & dom. Aug[illegible] Molign[illegible] doct. Vercellen[illegible] concludunt quod [illegible] difficultas [illegible] in hoc [illegible] de apicibus iuris, *vt per gl. in l. vnicam* [illegible] *ff. de [illegible]*. ſed [illegible] cenſetur ſublata per clauſulam, ſola [illegible] termi[illegible] exceptionis tenet Alex. *in conſil. [illegible] lib. [illegible]* . Secin[illegible] 24 [illegible] *fin lib. 1.* Ar[illegible] *in conſ. [illegible]* 12. *In caſu dom. Antonine, in 2. l. [illegible]*. ¶ Ad hanc difficultatem [illegible] reſpondet [illegible] patre[illegible], quod [illegible] præmiſſa, reſpectu [illegible] ex poſtulationis, vt dicatur excuſſio de iuris [illegible] ſcuſſio intereſſe partis [illegible] non [illegible] apicibus iuris, ſed de æquitate per tex. in *l. Mo[illegible] ff. de iure fiſci ibi [illegible]*. quem [illegible] ante eos ad hoc citauit Crotus in *rep. l. 1. conſtante. column. 44. ff. ſolu. matr.* idem quod diſcuſſio dicatur introducta ex æquitate volu[illegible] Cornel. in *conſ. 218 [illegible] libr. 3.* Paul. de Caſtr. in *conſ.* 327. *Clarum eſt & dictus Iacob. column [illegible] lib.* 1. imo adeo fundatur in æquitate iſta exceptio diſcuſſionis, quod ea gaudet etiam poſſeſſor fraudulentus. C[illegible] *in conſ. [illegible] columna [illegible]* & [illegible] hac diſtinctione allegant Corn. in *conſilio 55. columna [illegible]* etiam *obſtat. libro quarto*. ob id dom. Cacia admonet aduocatum partis tex. vt opponat exceptionem diſcuſſionis per viam & modum intereſſe, non per modum ex poſtulationis [illegible]. ¶ Al[illegible] ſolutionem traxit dom. [illegible], quod clauſula [illegible] inſpecta, operetur, [illegible] cognitio & diſcuſſionis procedatur, ſola facti veritate inſpecta, & [illegible] ſolen[illegible]

[illegible]

veri. [illegible] altercatio [illegible] *246. Ad [illegible] etiam præmittendum [illegible] vſurarius manifeſtus [illegible] 3. [illegible]*. 5 quod non probatur fama per teſtem dicentem [illegible] audiuit dici à maiori parte hominum, hab[illegible] pin. ſequitur [illegible] *in cap. [illegible] penale de appell. & in conſ.* [illegible] *fin* [illegible] Dec. fuerit ſibi contrarius. *in conſ.* [illegible] *colum. 3.* [illegible] non [illegible] venorem. Iaſon [illegible] *[illegible] columna. [illegible]* fert opiniones [illegible] indicia non ſunt [illegible] teſti nonnullos totum teſtium, committ inquit [illegible] obſeruato: & de inquiſi[illegible] Decius [illegible] *colum 2. in conſi. 25. colum. 2. conſi. 189. colum. [illegible]* Et gen[illegible] veri[illegible] ſt, omiſſion[illegible] actum [illegible] *vbi* Iaſon *col. [illegible] ff. de re[illegible] & not. [illegible] qualiter C. quando [illegible]*. ¶ [illegible] præmiſſa vſque adeo procedunt [illegible] inquirere [illegible] cus, vtcunque [illegible] obtineat arbitrium inquirendi in criminalibus Bald. *in [illegible] de offic. ordin.* per illum text. Iaſ. in *l. mile[illegible]*
6 *[illegible] C. de teſt. am. milit.* In qua ipſa re aduertendum, quod [illegible] inquiſitio dicitur de inde ſpecialis, ideo quod facilius ex[illegible] quam ius accuſandi. Bal. in *conſi. 415 quod proce[illegible] lib. 4. per gloſſ. quam dicit not. in § final. Inſtit. ſi quadru. pauper fec. dica.* hinc videmus quod vbi prohibetur [illegible] [illegible] prohibita cenſetur inquiſitio. Bar. in [illegible] *a domino C[illegible] colum. 2. verſ præterea ex hoc [illegible]*. Similiter [illegible] lata ac [illegible] per lapſum temporis, [illegible] ſublata & inquiſitio. gloſſ. & Doc. *[illegible] l. querela C. de falſis.* Alexan[illegible] *[illegible] colum. fin.* & ibi Iaſ. *colum. 2. in 13. limit. C. de Procurat.* [illegible] omnes exceptiones quæ poſſunt opponi contra [illegible] opponi etiam poſſunt contra iudicem inquirentem. Alex. *in conſ. 64. columna 2. libro 1.* quæ omnia maxime procedunt,

[illegible]

[illegible]

minuum [illegible] eſt [illegible] ad [illegible] ff. de origine [illegible] & l. 4 §. [illegible] ſed videmus [illegible] pacis, receditur a regulam communem [illegible] vbi, quod valet matrimonium [illegible] favor pietatis, [illegible] videmus etiam, quod favor [illegible] non [illegible] [illegible] ſequitur [illegible] ergo vbi favor pacis deſiderat [illegible] conceſſionem [illegible] concedi, [illegible] vt [illegible] de his quæ [illegible] Et pro [illegible] ſi receditur [illegible] ex cauſa iuſta de novo ſupervenienti [illegible] approbatum [illegible] videtur [illegible] cauſa [illegible] recedendi [illegible] ¶ Tertio reſpondeo ad l. ſi voluntate C. de reſcind. vend. [illegible] allegata, quod in [illegible] ceſſat iuſta cauſa & [illegible] contractum, ex læſione pecuniæ [illegible] quæ poſt perfectum contractum emptio [illegible] & [illegible] ſimilem, omne periculum [illegible] quia etiam commodum ad eum pertinet [illegible] §. [illegible] autem [illegible] ff. de cont. & rand. Quæ ratio [illegible] hic de [illegible] modo [illegible] quaſi de comodo tantum diſpo[illegible] & [illegible] defideranda eſt, [illegible] Archar. in conſ. 4 [illegible] [illegible] ductorem, & non [illegible] commo[illegible] non cenſetur [illegible] non videtur obſtare ratio [illegible] non licet, cum (vt dictum

6 [illegible] tantum. † Quarto reſpondeo, quod [illegible] quam [illegible] dominium [illegible] malum, & ob id periculum omne [illegible] ſed [illegible] non fuit malum [illegible] per diviſionem, imo remanet communis, & eius exercitium [illegible] quia officialis ius reddit nomine omnium, [illegible] commo[illegible] inde provenients, dividatur, & ex hac [illegible] iuriſdictionis, [illegible] eius exercitium incomoda & mala [illegible] plurima [illegible] non aliter aut non æque commo[illegible] & occurri poteſt, atque facta diviſione, per quam [illegible] caſtra ſingula adiudicentur, cum eorum territorio & [illegible] Quæ diviſio [illegible] ab initio habenda erat, vt probatum [illegible] per magnificum Præſidem ducalem dominum

[illegible]

[illegible] non permitteretur [illegible] Al[illegible] in [illegible] col. [illegible] verſ. 6. probatur lib. 6. ¶ Alter etiam [illegible] reſpondeo ad præmiſſa & dico, quod [illegible] inſtrumenta mihi exhibita, [illegible] habita [illegible] fuiſſe diviſionem aliquam, circa iuriſdictionem, ſed [illegible] caſtra tantum reſpectu [illegible] fructuum & aliorum [illegible] quæ diviſio circa corpora [illegible] ad iuriſdictionem [illegible] non [illegible] quia diviſio, dicitur alienatio, licet [illegible] l. 1 [illegible] § idem [illegible] de act. empt. l. ſi pupillorum. in princip. ff. de [illegible] l. cum [illegible] §. [illegible] ſi plures ff. de tranſ. Bart. in l. qui Romæ, §. duo fratres ff. de verb. ob. [illegible] alienatione non venit iuriſdictio, nisi dicatur [illegible] conſ. 18 Factum ſuper quo lib. 3. & in conſ. [illegible] ſimiliter non [illegible] generali conceſſione. Bal. in conſ. [illegible] Commune Spol. [illegible] nec venit iuriſdictio, appellatione bonorum [illegible] Bal. in l. data opera col. 17. C. qui accuſ. non poſſ. quod Bal. dictum [illegible] & ſequitur Iaſ. in conſ. 146. colu. 5. poſt med. lib. 2. & licet [illegible] diviſi ſubditi, per diviſionē locorum ſeu [illegible] videtur, in quib. habitant ſubditi, tamen non [illegible] diviſum totum territorium ipſorum caſtrorum [illegible] dicitur coh[illegible] in toto territorio, non in aliquibus [illegible] particularib. [illegible] in territorio particulari. Iaſ. in conſ. [illegible] col. penul. [illegible] ¶ [illegible] præſuppoſito, quod iuriſdictio dicatur ad [illegible] & commvnis, reſpectu vniverſalis territorij, non eſt dubium, quin peti poſſit illius diviſio, quia cum iuriſdictio eſt diviſibilis reſpectu proprietatis [illegible] feudi [illegible] vt per Alex. late in d. conſ. 25. lib. 5. ob id ſi iudex adhibitus ſuper diviſione, [illegible] videat commode eam dividi poſſe ad [illegible] & quietem dominorum & ſubditorum, [illegible] iuriſdictionem exerceāt, ſingulis [illegible] videtur quod [illegible] modum, iure & æquitate magis approbatum, vt [illegible] poſſunt dividere ¶ N[illegible] modo dicitur [illegible] facta diviſione [illegible] ſed in conſequentiam [illegible] iuriſdictionis, multa autem permittuntur in conſequentiam, quæ principaliter, de per ſe fieri prohibentur [illegible] ff. de auctor. tu. [illegible] §. illud ff. de verb. [illegible] hinc videmus, quod valet pactum [illegible] de non ſuccedendo, licet in conſequentiam contineat pactum de ſuccedendo, quo ad alios non [illegible] vt habetur in c. quamuis. de pact. lib. 6. Dec. in conſ. [illegible] ¶ Similiter † decretum [illegible]

iudicis, reſpiciens perſonam pupilli, extendi [illegible] conſequentiam, ad bona ſita extra [illegible] l. [illegible] pupillo. §. illud. ff. de reb. eor. l. propter litem. §. [illegible] ff. de excuſ. tut. [illegible] in l. pupillo. ff. de tut. & curat. dat. ab his. Rom. in conſ. [illegible] col. 2. Similiter Papa, diſpenſando ſuper voto, in conſequentiam præiudicat tertio, vbi principaliter præiudicare non poſſet. gloſſ. Inn. [illegible] c. & Doctor. in c. [illegible] per illum text. de voto. Decius in cap. quæ in Eccleſiarum. colum. 13. verſ. præterea ſecundo.

Mm 2 de con-

[illegible] ad vnum effectum, [illegible] ſequentiam [illegible] conſ. [illegible] pen. circa med. [illegible] ¶ [illegible] ctionem [illegible] perquod ipſi [illegible] do officiale [illegible] & percip [illegible] ias porti[illegible] euenientium ex ipſa [illegible] quod [illegible] buſs [illegible] proprietatis, quia officiatio [illegible] me ex dominis [illegible] onem ſemper [illegible] erunt [illegible] iuri nomine omnium do[illegible] commu[illegible] aperte repugnat diuiſioni. ¶ [illegible] pondeo, quod [illegible] diuiſio iuriſ[illegible] ſed [illegible] ſolum reſpicit vſum & commoditatem iuriſdictionis, non eius proprietatem, poſtquam alternis annis conſ[illegible] officiales, nam ſtante diuiſione in proprietate, non poſ[illegible] officialis conſtituere pro omnibus caſtris, [illegible] in toto territorio, ſed in parte tantum, & licet conſtituat quis officiales [illegible] tantum annis, ſatis tamen eſt, quod eo an[illegible], quo conſti[illegible] duro, & quo ad omnia caſtra [illegible] apertiſſime repugnat diuiſioni. Conſuetudo igitur aut præſcriptio circa vſum ad proprietatem extendi non poteſt, cum dicatur præſcriptio [illegible] ctiſſimi iuris *l.* §. *Iulia. vbi Bar. ff. de aqu. pluu. arcen. cap. cum olim. de præſcrip. cap. cum contingat de decimis. cum ſimil.* videmus in ſimili, quod vbi patres fratres ſimul habitant & viuunt, licet videantur [illegible] communicare fructus bonorum, non tamen eorum proprietatem *l. cum duobus* § *ſi fratres. vbi* Salic. *ff. pro ſocio. & in l. ſi paternum. ſolum* [illegible] *C. com. vtr. iud.* Barto. *in conſi. 22. colum. ſin. lib. 1.* Præterea eſt impoſſibile, quod videatur præſcriptũ circa proprietatem, imo nec circa vſum iuriſdictionis, quia vſus nõ fuit diuiſus, ſeu non fuit vſus in iuriſdictione diuiſa, ſed in tota iuriſdictione, licet alternis annis. ¶ Et cum appareat, iuriſdictionem communem remanſiſſe non eſt dubium, quin diuiſio peti poſſit, cum iuri petendi diuiſionem præſcribi non poſſit, etiam per tempus antiquiſſimum. Bart. & Doct. *in l. 1. § ad hæc reprobata gloſ. ibi. C. de annali excep.* Angel. *in conſ.* [illegible] *Iaſ. in l.* [illegible] *ſortem* §. *ſi centum. in 2. not. ff. de cond. indeb. & in* § *quædam. in 38. Inſt. de actionib.* ¶ Aduertendum tamen, quod licet proprietas iuriſdictionis diuiſa non ſit, tamen quando diuiſio proprietatis eſſet difficilis, modus aptior & laudabilior diuidendi iuriſdictionem, eſt per viam diuiſionis adminiſtrationis alternis annis, quæ diuiſio tenet perinde, ac ſi proprietas ipſa diuiſa eſſet. Abb. & Doctor. *in cap. prudentiam. in princip. de offic. deleg.* Angel. & Doctor. *in l. 2.* §. *ex his ff. de verb. oblig.* Alex. *in conſ. 7. colum. pen. verſi. conſirmo prædicta lib. 5.* Curt. Sen. *in conſ. 69. col. 5.* quæ difficultas diuidendæ proprietatis, hic quidem militat, ſtante diuiſione iam facta, ex qua argui videtur quod noluerunt domini iuriſdictionem diuidere, reſpectu adminiſtrationis, tantum alternis annis. Plane ſi fiat diuiſio ex integro, per adiudicationem ſingulorum caſtrorum, commodior erit diuiſio iuriſdictionis, reſpectu proprietatis. ¶ Modus autem deducendi rem ad [illegible], is communis [illegible] eſt, ſi inter dominos conſortes, aliquis ſit vir mitis & manſuetus, cuius culpa aut vitio, [illegible] dia, rixæ, aut ſcandala nũquam cœpta fuerint, is vt preces ad Principem offerat & diuiſionem ex integro dicat, quod fieri deſiderat ob cauſas memoratas. Rurſus iuriſdictionis adhuc non diuiſæ, diuiſionem vt poſtul[illegible], quam ita fieri petat, vt ne inter eos, tempus rixæ, aut ſcandali [illegible] caſio, permiſſa ſit. Quod ipſorum [illegible] poſſ[illegible] fuerit, ſi in conſequentiam diu[illegible] iuriſdictionis, & ipſa quoq; caſtra in diuiſionem legitimam [illegible], ſingul[illegible] ſingulis adiudicando. In qua ipſa re plurimu[illegible] caſeorum, quia iudicio diu[illegible] eiuſmodi [illegible] præſeſeſſi fuerint. ¶ Poſſent etiam in iudi[illegible] de[illegible] ſub[illegible] ipſorum [illegible] conſortium, quorum [illegible] intereſſe inter dominos [illegible] ſimilare [illegible] poſſint, [illegible] hoc [illegible] A[illegible] *in d. conſ.* [illegible] *verſi.* [illegible] *lib.* [illegible] ¶ [illegible] ad nouam diuiſionem,

per [illegible] Lucru. ff. [illegible] Bald. [illegible] de [illegible] De [illegible] *pren.* [illegible] lexan[illegible] *94. verſi.* [illegible] *pen.* *lib.* [illegible] Prin[illegible] d[illegible] *cap. in noſtra. de* [illegible] M[illegible] *in l. communionem* [illegible] De[illegible] *conſi. 62* [illegible] cet[illegible] banni [illegible] hatur ad [illegible] d[illegible] te banno, vt habet [illegible] *in l. 'aſtus* § [illegible] D[illegible] *poſitum* [illegible] cauſ[illegible] quæ tunc cen[illegible] bon[illegible] Ba[illegible] *col.* [illegible] poſt A[illegible] *in d.* §. *& quod tantum col. 13.* [illegible] non poſſ[illegible] Anc[illegible] dicit S[illegible] *in d.* § [illegible] *ſi tantum* [illegible] *col. 6 verſ.* [illegible] ces prin[illegible] quan[illegible] poteſt princ[illegible] ſectam tractare, & aliam [illegible]. Ad [illegible] non videtur quis [illegible] loco vnius al[illegible] cum prima. *leg. ſi donata.* § [illegible] *donationes inter vi*[illegible] *ff. de condit. & demonſtr. l. imperat.* [illegible] §. *ſi cum* [illegible] videt princeps, non [illegible] poſſet [illegible] atque habita diuiſion[illegible], non [illegible] de plenitudine poteſt[illegible] & ex [illegible] ſit, ad nouam diuiſionem, per [illegible] genius, habitatione [illegible] lor. vt in pecunia, aut aliter [illegible] & [illegible] deo, ſaluo ſaniori iud[illegible] 10. Sa[illegible] 2[illegible] Octobris. M[illegible] Aymo Crauetta ex Sauiliano. I. V. D.

SVMMARIA.

1 *Indefenſus quis dicatur, quando per perſonam minus legitimam defenſus eſt.*
2 *Nulla maior nullitas, quam ea, quæ prouenit ex defectu legitimationis perſonarum.*
3 *Aſſertio indoris factum partium* [illegible] *probat.*
4 *In caſibus in quib.* [illegible] *procedere ſine ſcriptis* [illegible] *dicitur ordinarium, nam de probationibus, quæ ſunt maioris præiudicii.*
5 *Probatio mandati ſpecialis debet eſſe clara, certa & notoria* [illegible]
6 *Quando probatio ponitur in ambiguo, non eſt locus iuramento ſuppletiuo.*

CONSILIVM CCLXV.

Pro vniuerſitatibus Brozaſchi, Venaſchæ, Melli, Fraxini contra vniuerſitatem & homines Sancti Petri, Marchionatus Salutiarum.

DIVINO ſubſidio ex corde poſtulato. Illu[illegible] Marchio Salutiarum commiſit nobilibus Antonio [illegible] & Antonio Boccaceti auditoribus cameræ computorum, qua[illegible] conſtito ſummarie de ſupplicati[illegible], & vniuerſitatis Sancti Petri, dicentis, ſe grauatam plu[illegible] quæ [illegible] ſunt cum vniuerſ[illegible] bus Brozaſchi, [illegible] Venaſchæ, Melli, & Fraxini, in informatione & retractatione taxationis [illegible] d[illegible] eſſet, illam [illegible] prout iuſtitiæ conue[illegible] ſum[illegible] ſimpliciter & de plano, ſine ſtrepitu & figura iud[illegible] [illegible] & abſque [illegible] ne ſcriptu[illegible] præſides deinde ip[illegible] per ſenter [illegible] diffinitiuam, det [illegible] lib[illegible] de [illegible], aut [illegible] dictæ vni[illegible] Pet[illegible] quas [illegible] bras [illegible] e vale[illegible] part[illegible] ſtatũ [illegible] taru[illegible] Br[illegible] [illegible] F[illegible] aſſ[illegible] [illegible]

tium, [illegible] bab mein [illegible] præ [illegible]. A [illegible], & de [illegible] cel [illegible] n [illegible] quærunt de [illegible] bus p [illegible] ē [illegible], [illegible]ndo, [illegible] dic [illegible] vt [illegible] oca [illegible] ex actis [illegible], altera [illegible] expr [illegible] h [illegible] ancti Petri. Circa primum [illegible] cen. [illegible] um prima fronte sententiam p [illegible] dam [illegible] non [illegible] nam videntur adhibita ſolennia iudicio [illegible], [illegible] conteſtatio litis, ex parte reorum neg [illegible] mol [illegible] ph [illegible], & probatio actionis [illegible]. ¶ Quamuis etiam nul [illegible] actus probation [illegible] us adhuc [illegible] vi [illegible], quia probationes non dicuntur de ſub tantia iud [illegible]. Bart. *in l. prolatam. circa finem. C. de ſenten.* Bald. *in [illegible] C. [illegible] l. [illegible] C. quomodo & quando iudex.* Alexand. in *conſ. 105. colum. 1. libro 5.* Decius in *rubr. extra. de iudic. colum. [illegible] poſt medium.* [illegible] *in conſ. 233. colum. pen. in conſ. 273. colum. pen. & in conſ. 295. column. 1.* Iaſ. in *[illegible] l. admonendi. colum. 34. ff. de iureiurando. & in l. properandum. §. cum quidem in not. C. de iudic.* facit Paulus de Caſ [illegible] in conſ. [illegible] *libro primo.* vbi quod [illegible] de [illegible] totis conceſſi [illegible], non facta fide debiti ſeu non viſo [illegible] instrumento, nul [illegible] non dicitur. Similiter cum pars fuerit citata dic [illegible] non poteſt p [illegible] ſententiam ſine [illegible] cognitione, quæ ip [illegible] cauſæ cognitio in [illegible] citatione conſiſtit. *l. in cauſa. §. cauſa cognita. ff. de minor.* & cum fuerit reſponſum reos, ꝑ petitione part [illegible] agentis & actus [illegible] in cōplures interuenerint, non videtur dici poſſe, non adhibitam eſſe cauſæ cognitionem vt per Bartol. *in dicta l. prolatam. colum. fin. verſic. quæro iuxta prædicta.* Decius *in dict. conſ. 295. colum. 1.* Et vbi aliqui defectus conſiderari poſſet in ſolennibus iudiciorum, ille videtur [illegible] per clauſulas, reſcripti Principis ſummarie, ſimpliciter [illegible], ſine [illegible] ſtrepitu & figura iudicij, ſola facti veritate inſpecta, [illegible] ſine inuolutione ſcripturarum: per ea quæ habentur *in l. [illegible] ſæpe. de verborum ſignificat. in cap. dilecti filij. de iudic.* & vbi [illegible] clauſula, ſola facti veritate inſpecta [illegible] poteſt Iudex [illegible] omiſſis ſol. Cornel. in *conſil. 181. colum. 5. circa medium verſic. Imo fortius libro 1.* Et iudicat Iudex tanquam Deus, [illegible] clauſula [illegible] facti veritate inſpecta. Bald. *in l. [illegible] colum. [illegible] Cod. de [illegible] liberand. & in cap. inueſtitura. de noua forma fidel.* quod Bald. dictum [illegible] & ſequitur Iaſon. in *conſil. 1[illegible]5. column. fin. libro primo.* ¶ Sed præmiſſis non obſtantibus, quæ vere non obſtant, [illegible] puto de iure verius, quod [illegible] talis ſententia [illegible] & euidenter nulla, quam null[illegible] temere [illegible] reperio, [illegible] ſententia contra [illegible] ſolennitates indefenſas, pro quibus procurator aut [illegible] legitimus

1 non interuenit. † [illegible] perſonam minus legi[illegible] m defect[illegible]. Socin. [illegible] *column. 5. poſt medium verſic. 3. quia licet habere[illegible]* quod [illegible] tem Syndici aut Procuratoris ad [illegible] dicta [illegible] vniuerſitates reas nō di[illegible] perſonæ legi[illegible], [illegible] ens mandatum ab ipſis vniuerſitatibus [illegible] non apparet, quod in creatione aut conſtitutione ip[illegible] Procuratorum, interuenerint duæ partes ex tribus, quod [illegible] eſt neceſſarium, vt mandatum Syndicatus dicatur [illegible] & validum. Bartol. *in l. fin. C. de prædiis curia. libro [illegible]* [illegible] *de [illegible] libro [illegible]* [illegible] Angel. *in §. præterea. [illegible] 2. col. [illegible] verſic. [illegible]* Alexandr. *in conſ. [illegible]* [illegible] Cornel. *in conſil. 148. colum. 2. verſic. [illegible] libro [illegible] conſil. 177. colum. 3. [illegible] conſil. 189. colum. 3.* [illegible] Socin. *in conſil. 95. colum. 2. libro 3.* [illegible], non ſufficeret [illegible] Nota [illegible], quod interuenerunt duæ partes ex tribus, prout ipſi Conſules aſſeruerunt, ſed requiritur quod Notarius atteſtetur ſimpliciter, & a ſeipſo de interuentu duarum partium ex tribus, pro quo facit idem Socinus

2 *in conſ. 32. col. [illegible] poſt medium. libro 4.* † Nulla autem maior nullitas [illegible] ea quæ prouenit ex defectu legitimationis perſonarum, vt habetur in *l. licet. C. de Procurator.* Quod procedit etiam [illegible] pronunciet iudicium eſſe legitimum, quia talis pronunciatio [illegible] non nocet. Alexand. in *conſ. 202. colum. fin. verſic. [illegible] libro 2.* ¶ Onus [illegible] probandi, quod Syndicatus legitime conſtitutus [illegible], ſpectat ad partem contra quam eſt iuris præſumptio, quia ſolennitas [illegible] non præſumitur niſi probetur: ita in terminis Syndic [illegible] *conſ. 95. colum. 3. [illegible] libro 3.* Alexand. in *conſil. [illegible] 5. colum. 1. verſic. nec*

ta [illegible] libro 2. & in conſ. 92. colum. 2. [illegible] [illegible] quo [illegible] ex, quod non credatur [illegible] aſſerent, [illegible] quod [illegible] in [illegible] apparere ipſi [illegible] ipſis partis, [illegible] mandati, nec in genere, neq; in ſpecie d[illegible] [illegible] Syndicatus legi[illegible] tota vniuerſitas [illegible] & [illegible] in aliquib. dicatur, quod [illegible] factum ſit, tamē iſta verba [illegible] [illegible] ſecundum communem vſum loquendi [illegible] in pleno conſilio, id eſt, publice & [illegible] notorium aut inferatur neceſſario [illegible] Et quod non præſumatur [illegible] congregationis [illegible] aut vniuerſitatis, quidquid [illegible] Aretin. in *conſ. [illegible]4. Diligenter in fin.* ¶ Secundo [illegible] aſſerta [illegible] dicitur, quod electæ [illegible] ipſas vniuerſitates ad faciendum remiſſione [illegible] ne fundabant [illegible] S. Pe[illegible] eſſet det[illegible] fertilitatē, de [illegible] & [illegible] t [illegible] *[illegible] depro[illegible]* † Aſſertioni [illegible]

non prob[illegible], puta, ſi aſſerat ibi [illegible] quaant [illegible]. Bal. *in conſ. 40. lib. 1.* Et [illegible] Socin. *in conſ. [illegible] colum. [illegible] lib. 4.* vbi quod non credit[illegible] [illegible] eius ſententia [illegible] partium, prout hic, vbi [illegible] partium, [illegible] ſecundum [illegible] aſſertioni [illegible] duntaxat [illegible] poteſt & tamen de tali [illegible] de appare[illegible] nec apparere [illegible] poterit. ¶ [illegible] aliqui [illegible] credendum aſſertioni [illegible] precedant [illegible] quod [illegible] lutione [illegible] Ad [illegible] clauſula debet [illegible] in [illegible] bus non conſiſtit [illegible] omnes exceptiones, quæ [illegible] friuolas [illegible] *[illegible] 2. [illegible]* [illegible] Decius [illegible] etiam [illegible] mouenti [illegible] terpret[illegible] legum [illegible] de [illegible] per Bart. & Do[illegible] clauſula non obſtante [illegible] de conceſſion[illegible], ne alteri præiudicium [illegible] tur. Comp. & Doct. *[illegible] que de reſcript.* Alexand. *in conſ. 135 [illegible] colum. 1 lib. [illegible] & in conſil. [illegible] 3 lib. 5.* De[illegible] *de re[illegible] § de conſtit. Princip.* Idem in clauſula, non obſtante [illegible] quia intelligitur de priuilegio [illegible] Iaſon *in conſil. 233. colum. 7. lib. 2.* & ita [illegible] collig[illegible] hic ex verbu illo, inuolutione ſcripturarum [illegible] Principi fuit tollere inuolutionem ſcripturarum, & [illegible] & volumen ſcripturarum quia [illegible] & [illegible] circa non neceſſaria. S[illegible] electione [illegible] aut reuiſitatorum, & [illegible] reuiſitationi puta in hoc conſiſtit [illegible] Summa. & maxime quod ipſi ſic electi [illegible] qui contentus in [illegible] eſt præiudicialis tot vniuerſitatibus, ob [illegible] abſurdum [illegible], quod [illegible] cipis fuerit, quod in talibus actibus [illegible] & grauibus, credatur ſimplici aſſertioni delegatorum, & [illegible] in eis ſcriptura non eſſet neceſſaria, aut ſaltem [illegible] teſtes. ¶ Secundo reſpondeo, quod [illegible] clauſula ſine inuolutione ſcripturarum, de [illegible] ſcriptis, quæ ſiunt circa ordinē aut ſolennia iudici[illegible], [illegible] antea, quæ reſpiciunt deciſionem cauſæ ita Ant. de Butr. *in cap. quintavalle. de iureiur.* [illegible] declarans dicta Bart. *in auth. niſi breuiores. C. de ſent. ex breui. recit.* vbi [illegible] Anto[illegible] quod † in caſibus in quibus Iu- 4

dex poteſt procedere ſine ſcriptis, creditur Iudici de actis ordinarii [illegible] non de proba[illegible], quæ ſunt maioris præiudicii [illegible] dictum refert & ſequitur [illegible] *in conſ. 63. [illegible] col. 6. ver. [illegible]* Sed cauſa reuiſionis [illegible] maximi præiudi-

ea, reſpiciens probatoria, & in qua totius rei & cauſæ ſumma conſiſtit, ergo. &c. Et profecto non potuit non pluribus admitti, quando legitalem ſententiam ſic fine [illegible] ſupplicatione iudicum, quod ipſum ſi permiſſum ſit Princeps, à quo iura prodeunt occaſionem præberet iniuriæ & [illegible] inquirendi. ¶ Tertio reſpondeo, quod ex alio non probat talis [illegible] tanquam nimium generalis: genus enim inducit obſcuritatem & incertitudinem. *l. in tradendis ff. com. præd. l. cum Stichus ff. de ſolut. l. naſciturus in princ. ff. de verbor. cum ſimilib.* ſed probatio obſcura non releuat. *l. neque natales l. ad probationem. C. de probat. l. certum. ff. de [illegible] ſcrip. in præſentia de probat. cum ſimil.* & in terminis aſſertionis iudicis, quod non probet, ſi eſt generalis, vbi alias probaret, tradit Aret. in conſi. 68. Excel domine, colum. penult. poſt med. verſic. præterea poſito, quod de actu. Si enim admitteretur talis probatio generalis, eſſet tollere defenſionem parti: ideo debebant delegati [illegible] ſpeciem narrare de ipſa diuiſione, exprimendo omnia loca & membra ipſarum vniuerſitatum, & dicendo cauſas, ex quibus alia aliis loca meliora eſſent, non ſic in genere dicere loca fuiſſe reuiſa, & quod ex reuiſione apparuit, de cauſa retractioni. Et hac ratione videmus, quod libellus debet eſſe ſpecialis, non generalis, quia alias non poteſt reus deliberare, an debeat cedere vel contendere, vt habetur in *l. 1. ff. de edendo.* Præterea vbi talis aſſertio probaret (quod minime conceditur) illud deberet intelligendum coram ipſis delegatis, qui reuiſionem fecerunt, ſecus coram iudice appellationis, qui præſentes non fuit ſicut dicitur de ſtatuto, quod produci non debet coram iudice lecturum, ſecus coram alio, qui præſumitur illud ignorare. Barto. *in l. præſcriptione circa fi. C. ſi contra ius vel util. pub.* Alex. *in conſi. [illegible] interno dub. libro 2.* & profecto eſſet plus quam abſurdum, quod iudex appellationis teneatur ſtare ſimplici aſſertioni, primi iudicis, licet de omnibus ex actis appareat, quia potuit primus iudex moueri ex probationibus minus integris, non concludentibus, aut [illegible] ſis contrariis probationibus: quanto in noſtro [illegible] iudex appellationis, ſimplici aſſertioni, primi iudicis, cum [illegible] ſcripta per eum, in ſcriptis redacta eſſent. [illegible] non probarent. ¶ Quarto reſpondeo & dico, quod vbi præ[illegible] [illegible] nt, qua fortiſſime tamen vigent, ex alio non obſtat [illegible] locorum, at [illegible] reuiſioni aſſiſtentia, quia in [illegible] quærat mandatum ſpeciale *l. ſi is qui Stichũ. ff. de proc. rat.* vbi [illegible] valet electio procuratoris, ſi dominus ratam [illegible], ergo probatur, quod procurator generalis eligere nõ poteſt, quia ſi poſſet, ratificatio non eſſet neceſſaria, & ita tradit Bart. *in l. [illegible] pulatus fuerim illud aut illud. in fi. prin. ff. de verborum oblig.* De quo in mandato ſpeciali non apparet, etiam per aliquam [illegible] oncem ipſorum delegatorum, nec præſumitur mandatum [illegible] probetur. *capi. cum in iure de offic. deleg.* Solum enim aſſerunt delegati, quod partes dederant poteſtatem aſſiſtendi reuiſioni talibus & talibus, & [illegible] intelligitur de partibus præſentibus in iudicio puta, de Syndicis [illegible] citantibus, nec poteſt intelligi [illegible] delegatorum, de aliis perſonis extrinſecus. *l. ſi ita ſtipulatus. § Chryſogonus.*

6 *ff. de verborum oblig.* † Iam probatio mandati ſpecialis [illegible] debet eſſe clara, certa & neceſſario concludens *l. ſi non hoc. C. vnd. lib. capit. in præſentia. de probatio.* Sed neceſſario non infertur ex illa aſſertione delegatorum, partes dederunt poteſtatem talibus, ergo interuenit mandatum ſpeciale, imo veriſimilius eſt, quod non proceſſit mandatum ſpeciale, ſed quod Syndici ſolicitatores cauſæ [illegible] conſenſerint in aliquos, vt reuiſioni aſſiſterent. & præmiſſa dicta ſint ex abundanti, quia (vt dictum eſt) nulla probatur electio etiam per Syndicos tantum, ſine ſpeciali mandato, per aſſertionem eiuſmodi delegatorum, quibus fidem adhiberi non oportet in re tam grandi. Ex quib. apparet ipſas vniuerſitates indefenſas [illegible], non ſolum ab initio, ſed etiam in medio cauſæ, circa aſſertam locorum reuiſionem. ¶ Tertio principaliter colligitur nullitas aſſertæ ſententiæ, quia fuit lata ex falſis cauſis, id eſt, propter reuiſionem locorum, ex qua dicitur apparuiſſe de cauſa retractandi antiquam taxationem, & compartitum antiquum hominum S. Petri, & quod tali reuiſioni conſenſerunt ipſæ partes de eaq; contentæ fuerunt, & tamen de talib. enarratis nullo modo apparet, neq; per ſcripturam, neque per teſtes [illegible] parati [illegible] ſunt, quod cauſæ enunciatæ in ſententia, ſint falſæ, [illegible] quod de eis non appareat. *l. duo ſunt Titii. ff. de teſta. tutel.* ideo [illegible] dicitur concedi ex falſa cauſa, quando conceditur ex [illegible] ſeu de [illegible] non apparet. *l. 1. § hæc verba. ff. ne vis fiat ei.* Paul. [illegible] Ceſtr. in conſ. 204. in cauſa. & quæ [illegible] vrbibus aliis. *colu. 2. circa medium. lib. 1.* Conſtat autem vitiari ſententiam, ex falſa cauſa [illegible] Gloſſ. in l. C. [illegible] *Sene ff. de inter. & interr. act.* [illegible] Princeps [illegible] cauſa [illegible] Card. [illegible] ieton. [illegible] *poſito poſt conſilia Antonii de Butr. colum.* [illegible] [illegible] tamen [illegible] eius ex [illegible] cauſa. Aret. [illegible] *ordinem col.* [illegible] *Decius communi* [illegible] *colum 8.* ¶ R[illegible] ad contrarium reſpondere [illegible] qui [illegible] præmiſſis. Reſpondeo tamen in ſpecie ad maiorem [illegible] tionem: & primum, quod interueneriit cauſæ cognitio [illegible], ex quo vniuerſitates appellantes [illegible] defend[illegible] legitimas perſonas in cauſa cum cognitione requiritur [illegible] citatio partis: quia cauſæ [illegible] partis tales [illegible] dicuntur. *fin. C. ſi per vim. l. [illegible] eo modo. [illegible] cum ex liter. de in int.* [illegible] ita per illa iura in cauſæ cognitione, ait Abbas [illegible] *colum. 8. in 8. queſt. libro 2.* [illegible] pro [illegible] fuit, tot vniuerſitatibus abſentibus, pro quibus nemo legitime comparuit. Secundo reſpondeo, quod non ſufficit vniuerſitates ſuiſſe citatas [illegible] vt dicatur impleta cauſæ cognitio, ſed alia requiruntur, de quibus ſupra, id eſt, quod intentio actoris iuſtificetur, quod non pronunciatur ex talibus cauſis, quod de probatione legitimis ex actis conſtet, quæ lucet [illegible] interuenerunt. Citatio enim dicitur principium cognitionis cauſæ, ſed non per eam ſolam impletur cauſæ cognitio. § *penul. Inſtit. de pœnis tem. litig.* Oldrad. in conſi. 227. *De toto themate colum. 1.* ¶ Non obſtat, quod [illegible] ones non dicuntur de ſubſtantia iudicii: quia in primis [illegible] iſtud poſſem [illegible] Doctores [illegible] contrarium [illegible] *rel ff. meas col. [illegible] Maria de conſtitut.* Baldus *in l. 2. C. [illegible] ſi. 27. libro 3. & in conſ. 313. in fin. libro 5.* Roman. in conſ. 321 *verſicul. [illegible] aduert. ndum.* Abbas *in conſilio 406. libro 2.* Anchar. in conſ. [illegible] 8 *iudex de iure colum. 3. verſic. pro Sempronio.* Cald. [illegible] *ſilio 8 columna 2. in titul. de ſentent. & re iudicata.* Calcan. *in conſilio 3. colum. final. circa medium. in conſil. 88. colum. 2. poſt medium & in con[illegible] [illegible] colum. 2. ante medium.* Sed quia iſta opinio videtur periculoſa, & forte contraria videtur magis communis, aliter & ſecundo reſpondeo, quod argumentum non videtur procedere in caſu noſtro, in quo probatio neceſſitas ponitur in conditione, quia Princeps mandat [illegible] ſupplicata fieri, conſtito de eis, quia ablatiuus abſolutus, conſtito, reſoluitur in conditionem. *l. ab emptione ff. de pactis l. cum [illegible] ff. de condit. cum ſimilib.* conditio autem imprimis formam [illegible] Baldus in *authent. matri & auia. C. quando mul. tut. offic. [illegible].* forma autem non ſeruata, actus fit nullus. *l. diligenter. 2. mand. [illegible] capit. cum dilect. de re iudic.* Pro hoc, quod tradunt Sa[illegible] *l. [illegible] adhibendis ff. de iureiurando.* vbi [illegible] *columna 16. verſic. [illegible] caſus eſt.* vbi, † quando probatio ponitur in conditione, non eſt locus iuramento ſuppletiuo. 6

Tertio, vbi hæc ſecunda reſponſio diſſimulatè pareretur ex his, quæ habentur in dicta [illegible] admonendis, reſpondeo aliter, quod concluſio [illegible], quod probationes non dicuntur de ſubſtantia iudicii, & quod ſententia lata ſine probationibus, non dicitur nulla, non procedit, quando ſententia expreſſe ſe referret ad ipſas probationes, & in eis fundatur, de quibus non appareret, quia tunc ſententia dicitur nulla, tanquam lata ex falſa cauſa, per ſupra dicta in tertio fundamento. It[illegible] deci[illegible] Curtius Iunior in conſil. 117. *colum. final.* Ripa in *l. quarta. § ſi iudex. colum. ff. de re iudicata.* Addo Aretin. in conſil. 70 *colum. 3. & in conſ. [illegible] colum. penult. in fine.* Sed hic tota ſententia delegatorum fundatur ſuper aſſerta reuiſione locorum, & ſuper aſſerto conſenſu partium, nõ ſpecificando, quomodo & qualiter ad talem reuiſionem proceſſum fuerit, cum tamen de talibus enunciatis nullo modo appareat, ergo, &c. ¶ Non obſtat clauſula, ſola facti veritate inſpecta, quia per eam ſolum tolluntur ea, quæ ſunt ordinis iudiciarii non de [illegible] ſubſtantialis, vt habetur in *dicta clement. ſæpe. de verborum ſignificationib. & in extrauag. ad [illegible] dum* per Bartol. & Anchar. in *conſi. 373. Primo & ante omnia colum. [illegible] verſic. non obſtat ſtatutum.* vbi propterea, quod non admittitur libellus ineptus vel repugnans, nec cum [illegible] perſonis [illegible] actionis cum officio iudicis, & licet [illegible] ineptitudine [illegible] nulla dici poſſent, ſtante [illegible] clauſula tamen Doctores communiter, quod clauſula, ſola [illegible] veritate [illegible] non tollere [illegible] res & exceptiones [illegible] mas [illegible] nihil [illegible] per Decium *in [illegible] capit. ex parte colum. 1. de officio deleg.* Sed iſta exceptio, quo[illegible]

lat [illegible] eſt [illegible] e [illegible] p [illegible] e [illegible] pab [illegible] ti [illegible] atu [illegible]. Q [illegible] cond[illegible] natæ poterant aut po [illegible] o [illegible] onere contra aſſertam tenſionem [illegible] deaut? Quis aduucatus adeo ſapiens [illegible] iuſtitia vel iniuſtitia reuiſionis, de qua non [illegible] mortales, ſimul atque vidi aſſert [illegible] mſe [illegible] ſion fundatam duntaxat, illud ſ[illegible] cogitauerunt de legitimanus vniu[illegible] ad [illegible] ſus inſul [illegible] ad [illegible] fuiſſe poſſent. [illegible] quo [illegible] conſidero, eo amplius in admirationem venio. Cur [illegible] conſtitutum eſt, vt eorum, quæ producuntur inn[illegible] nec habeantur pro producti [illegible] copia [illegible] *l. ſi* [illegible] vbi Salic. *C. de fide inſtrument.* Bald. in *con* [illegible] *De* [illegible] *libro* 1. Roman in *conſil.* 519. Ripa *in l.* [illegible] *colum.* 20 *circa med.* [illegible] *ff. ſi cert. petatur.* [illegible] ratio non alia eſt, [illegible] denegatio [illegible] deneg[illegible] defenſionis. Quo [illegible] fiet, vt defendat ſe quis aduerſus inſtrumentum, ſi n[illegible] copiam [illegible] habeat, & videat eius ver[illegible] & tenorem [illegible] impoſſibile erat, & [illegible] ſ[illegible] vniuerſitatib. & condemnatis, [illegible] rem rei [illegible] impugnare, qui [illegible] aduucati & procuratores nunquam legiſſent aut vidiſſent. Iſte modus procedendi & pronunciandi non tam ad nouitatem videtur pertinere, quam ad [illegible] quandam ſolenné. Concludo, ex præmiſſis aſſertam ſententiam, nullitate laborare plusquam inſigni, & ſic appellante [illegible] qui de nullitate opponunt vbi de [illegible] tur defenſione naturali Baldus in *l.* [illegible] *C. de* [illegible] *in conſ.* 16. *colum.* 9 *circa fin.* ❡ [illegible] ad ſecundum dubium, an [illegible] tentia [illegible] iniuſta & iniqua aſſerta ſententia, & quidem [illegible] videtur ſine dubitatione, nam ſi nulla eſt, ſi pro qua, ergo & iniuſta, quia omne nullum iniquum eſt. Butr. *in c. dilecto. colum.* 6. *de exception.* quod dictum refert & ſequitur Cornelius *in conſ.* 315. *colum.* [illegible] *lib.* 3. imo licet contendant Doctores an [illegible] ſententia lata [illegible] probationibus, dicatur [illegible] nullus tamen dubitat, quin dicatur iniqua & iniuſta, cum acta [illegible] probantia, abſoluteus debent *l quicumque. C. de edend.* [illegible] vt olatu non potest aſſertam ſententiam [illegible] & iniuſtam [illegible] Sancti Petri, [illegible] modo ſtituta, vt ſupra dictum eſt. Quod maxime ob [illegible] in caſu iſto, in quo [illegible] de probatione valoris [illegible] in lo [illegible] & amplius vel minus, quam [illegible] ritatum app[illegible], cuius valoris [illegible] ſuit eſt, propter [illegible], ex quibus rei valor [illegible] non pe[illegible] tur, immediate [illegible] ſuper valore rei, [illegible] probat [illegible] Baſt. [illegible] *l. de* [illegible] *colum.* 2 [illegible] *ad leg.* [illegible] *C.* Decius *in conſil.* [illegible] omnis æquitas & omnis ratio naturalis [illegible] probatio talis valoris, in actis redacti eſſe, [illegible] ſe defendere poſſet. ❡ Secundo [illegible] quitas & iniuſtitia, quia ſunt oppoſitum de [illegible] iniquiſſima, cuius initii memoria nonextat in contrarium, & quod ab omni tempore vniuerſitas Sancti Petri [illegible] ſupra in comp[illegible] to eo modo, quo ipſa [illegible] quæ præſcriptio ſatis verificatur ex [illegible] ipſius comp[illegible] ad nuranda eſt, quamodo nec ita ſuit [illegible] talis compartiti, cum tali [illegible] tendæ [illegible] præſcribatur ſpacio ſaltem quadraginta annorum. [illegible] *C. de præſcr.* 30 *annor.* vbi, quod tamen [illegible] præſcriptur, [illegible] Amplius dicendum eſt, quod vbi ſu[illegible] læſa vniuerſitas S. Petri, ex tam compartito [illegible] videretur præſcriptum iuri [illegible] ſionis, per ea, quæ habentur in *l.* [illegible] *C. de* [illegible] vbi, quod remedio illius legis præſcribitur [illegible] *conſ.* 99 *in fine.* Cornel. *in conſilio* 17. *col.* [illegible] *lib.* 4. & [illegible] vniuerſitatem requi[illegible] tamen [illegible] ſpores non paulo [illegible] temporis [illegible] antiquius initii memoria non extat in contrarium, præſcriptum dicitur etiam contra Principem & iura regalia, [illegible] *l. minorum. ff. de var.* [illegible] Nec cauſa ſuberat diminuendi regiſtri, niſi dimenſio [illegible] facultatum agentium de nouo ſuperueniſſet, quod minime [illegible] probatum dicitur, immo [illegible] fuit allegatum, vt [illegible] quomodo, & an, ſi fuerint delegati, rei [illegible] antiquatus obſeruatam, reuocare potuerunt, contra tex. *in l.* [illegible]

ff. [illegible] *cap. consu.* [illegible] *de tran.* [illegible] *de* [illegible] *ſpoliat.* [illegible] *in* [illegible] §. [illegible] *cap ſuper quibuſdam* §. *præterea.* [illegible] *cap.* 1 *de præ* [illegible] *lib* 6. cum [illegible] vocatione, [illegible] ſtate eſt, ſine [illegible] legitima, vt habe[illegible] *c. cap.* [illegible] *de* [illegible] *obat.* ❡ Tertio colligitur iniquitas, quia fuit o[illegible], quod vniuerſitas Sancti Petri po[illegible] habere [illegible] ob id, [illegible] legiti volebant ſic procedere, hoc ſcriptis ad [illegible] informationes, & viſiones qu[illegible] ſdam [illegible] bo[illegible] equaliter releruare debebant, & ſe informare de bo[illegible] *per l final. ff. de fruct. lit. expenſ* imo [illegible] dum magis [illegible] & conſiderandum, quod antecelſores hominum Sancti [illegible] nunquam ita regiſtraſſent, nec tam diu tacuiſſent, ſi ſe plus æquo [illegible] vidiſſent. *argum. l cum indebito. ff. de probation.* ❡ Concludo ex præmiſſis male, [illegible] inique iudicatum, & bene [illegible] de nullitate dictum, ſalvo ſaniori iudicio. Saul[illegible] 14. Octob. 1545. Aymo Crauetta ex Sauiliano Iuris vtriusque Doctor.

SVMMARIA.

1 *Princeps dicitur ſupra ius ciuile, & pleniſſimam in eo poteſtatem habet.*
2 *Licet* [illegible] *iuri ciuili derogare, ſine cauſa, id tamen de honeſtate facere non debet niſi ex cauſa.*
3 *Quis* [illegible] *conſentire velle ea ſine neceſſario* [illegible] *ad illud.*
4 *Princeps* [illegible] *ſunt tribuere* [illegible]
5 *Non poſſ* [illegible] *derogare, ad tamen operatur* [illegible] *partem* [illegible]
6 *Sententia lata à iudice delegato* [illegible] *de* [illegible] *delegatione non conſtat,* [illegible] *nulla.*
7 *Quando opponitur de nullitate, per modum exceptionis* [illegible] *non* [illegible] *temporis præſcriptio, quia quæ ſunt temporalia ad agendum, perpetua ſunt ad excipiendum.*
8 *In* [illegible] *fatalia non habentur in conſiderationem.*
9 [illegible] *non præſumitur ex temporis antiquitate, quia mandatum non* [illegible]

CONSILIVM CCLXVI.

Pro hominibus & communitate Montis Orexii, contra communitatem & homines Montiſmali, Marchionatus Saluciarum.

DIVINO ſuſſidio ex corde poſtulato. In cauſa communitatis & hominum Montis Orexii, contra communitatem & homines Montiſmali, Marchionatus Saluciarum, illud primo quæritur, an poſſit [illegible] ſchto ſtuurchi [illegible] munitatem Montis Orexii appellantem aduerſus ipſum fatalium, in quo dubio breuiter concludo, quod licet nam inſtantia fuit introducta de mero iure ciuili, princeps † autem eſt 1 ſupra ius ciuile, & pleniſſimam in eo poteſtatem habet *l. princeps. ff. de leg.* [illegible] *vox C. eod. titul capitul. propoſuit. de conceſſ. prab. &* [illegible] *in p* [illegible] *habetur in cap.* 1 *de tranſact.* [illegible] *de conſtitut. libro* 6. *in cap. ſtatutum. & in cap. fin. de reſcript. libro* 6. & tibi ad diſficultatem erat, quando mediante tali iure ciuili non eſſet [illegible] dominium aliquod alicuius rei, puta ex ſententia facta eius executione, vel ex præſcriptione, per ea quæ habentur in *l. fin. C. ſi quis contra ius vel vtilit. public. & in c. quæ in eccleſ. earum. de conſtitut.* ſed hic non agitur de iure mere ciuili & poſitiuo in quo tantum poteſtatem Princeps habet, quod eius conſtitutionem factam habere poteſt pro infecta, quoad [illegible] *clement.* 1 *iuncta gloſſ. in verbo. pro infectis. de immunit. eccl.* Abbas *in c.* [illegible] 99 *colum.* [illegible] *circa medium & in conſil.* 84 *colum.* 1. *poſt medium. lib.* 1. & irritat Princeps rerum naturam in his, quæ ſunt iuris poſitiui, §. *fuerat. de actionibus.* & de nihilo aliquid facit *cap. cum a nobis. de his quæ fiunt a prælatis ſine conſenſu capituli* § *ſi.* 10 *quæſt.* 1. Old[illegible] *in conſilio* 257. *Factum tale eſt. Dominus Nicolaus ſolummo.* 6. iam qui diſputat de poteſtate Principis, ſicut ſe ſupertorem vel patrem Principi, & ponit ſedem ſuam in aquilone, tentando ſimilis eſſe altiſſimo. Baldus *in conſilio. Proponitur quod inter agnatos. colum.* 1. *circa medium. libro primo.* fortius ſi Princeps in reſcripto ſuo dicat, ſe aliquid facere quatenus de iure poteſt, cenſetur iuri ciuili derogare, & illud tollere, quia de iure ita facere poteſt, ſecus ſi dicat, ſi ita fieri debeat, quia, † licet poſſit 2 Princeps iuri ciuili derogare, ſine cauſa, id tamen de honeſtate facere non debet, niſi ex cauſa, ita Imol. *in conſilio* 146 *colum.* 1. ideo Principi dici non poteſt, Domine cur ita facis? Specul. *in titul. de locat.* §. *nunc oſtendendum. verſicul.* 89. Old[illegible] *in conſilio* 330. *Ad* [illegible]

dem videtur colum. 2. in fin. allega [illegible] *ex perſona* [illegible] no- [illegible] Princeps, ex [illegible] & [illegible] Baldus *in cap. cum* [illegible] *proprie- tat.* [illegible] genu [illegible] laborioſum ponus q [illegible] ſate in his, quæ ſunt [illegible] ne [illegible] cau[illegible] ob [illegible] ipedim [illegible] dimenti, poteſt [illegible] adverſus lapſum [illegible] Bar. *in auth.* [illegible] *C.* [illegible] *tempor. appell.* Alex [illegible] *paulo* [illegible] *repetitum in conſil.* [illegible] *libro 5.* Decius [illegible] 456. *colum. final.* [illegible] Iudex reſtitu [illegible] ex cau[illegible], quanto fortius Princeps [illegible] Iudex Iudicum: vt notat [illegible] *in* [illegible] *Iudex. C. de decurio.* [illegible] *libro* [illegible] Olrad. *in conſil.* [illegible] 9. *Nam* [illegible] vbi ſi iuſte p[illegible] Prætore po[illegible]det, quanto magis aut [illegible] Princ[illegible] omnis, quæ Princeps reſti[illegible] poſſit [illegible] lapſum fa[illegible] Guido Pap. *quæ* [illegible] 185 *per text. in l. 2. § quod ſi tas* [illegible] *a noſtro numine reparationem* [illegible] *C. de tempor. appella.* Sed [illegible] citra præiudicium veritatis, quod nulla eſſet [illegible] reſtitutio a Principe adverſus lapſum fatalium, adhuc non poteſt communitas Montiſmalis ſe iuuare, ex lapſu fatalium & deſertione appellationis, quia tali aſſertæ deſertioni, legitur renunciatum, in memoriali, ſub die decima menſis Septembris, [illegible] 45 in quo petiit pronunciari bene iudicatum, & male appellatum, & in cauſis [illegible] diu, non enim poteſt Iud[illegible] appellationis pronunciare ſuper negocio principali, deſerta [illegible] appellatione, quin prius renunciatum ſit ipſi deſertioni, quia [illegible] ſententia poſt lapſa fatalia, all[illegible]icatur nulla. Ioan. And. [illegible] *penult.* [illegible] *gloſſ.* [illegible] *de appellat.* Alexand. *in conſil. 33. colum. 3. libro 1.* Guido Papæ *queſt. 11. ante finem.* petendo igitur pronunciari ſuper negocio principali, in

3 neceſſarium antecedens cenſetur renunciare deſertioni, [illegible] qui enim vult conſequens, cenſetur velle omne neceſſarium ante cedens ad illud. *l. ad rem mobilem* [illegible] *l. ad legatum ff. de procurat.* [illegible] *de acquir. hered.* & in terminis renunciationis [illegible] & Aret. in *l. 1. ff. de acquir. hered.* Sed diceret aliquis, [illegible] deſerta, Iudex appellationis nullam habet iu[illegible] & perinde eſt, ac ſi appellatum nō eſſet, ob id conſenſu partium

4 nihil videtur facere, qu[illegible] priuati non poſſunt tribuere iuriſdictionem. *l. priuatorum. C. de iuriſd. om. iud.* & in te[illegible] deſertionis appellationis eſt text. in [illegible] *ſi appellatio* [illegible] glo. & Doct. *de appellat.* Alex. *in conſil. 59.* [illegible] *colum 2.* [illegible] *libro 4. in conſil.* [illegible] *colum. 1. &* [illegible] 114 *colu. 2. lib. 5.* ¶ Reſpondeo, quod permiſſa procedunt [illegible] ad hoc,

5 vt valeat ſententia nulla, tanquam ſententia, quia † non poſſunt partes iuri publico derogare, ſed tamen operatur renunciatio & conſenſus partis, in vim pacti gl. [illegible] *in l. 2. C. com. vtr. iudic.* Socin. *in conſil.* [illegible] *colum. 18. vol. pen. lib. 1.* Curt. Iun. *in conſil.* [illegible] *colu.* [illegible] ſta tamen dicta ſint ex abundanti, quia (vt dictum eſt) appellatio non eſt deſerta, cum fuerint appellantes reſtituti, ex cauſa pluſquam iuſta, licet potuiſſet Princeps reſtituere, etiam ſine cauſa, cum agatur de iure mere poſitiuo. ¶ Venio igitur ad merita negocii principalis, bene an fuerit iudicatum per primos Iudices, qui pronunciauerunt communitatem Montiſmelii, non teneri ad contribuendum in oneribus [illegible] niuerſitatum Mōtis Oroſū, niſi pro quinta p[illegible] ſententiæ latæ per quoſdam Iudi[illegible] quorum tamen delegatione non conſ[illegible], nec co[illegible] ¶ [illegible] puto quod male & nulliter fuerit p[illegible] nunciatū [illegible] ſententia prima, quæ legitur confirmata, lata a [illegible] Iudices delegatos, de quo [illegible] & leg[illegible] non conſtat, & conſtat, quod non [illegible] Iudi[illegible] nec deleg[illegible] mandatum p[illegible] *cum* [illegible] *de off. deleg.* [illegible] probādum delegationem P[illegible] *C. de mand. Princip.* [illegible] *C. de* [illegible] 17. Rota [illegible] Alexandr. *in conſil.* [illegible] *lib.* [illegible] nec ſuffic[illegible] conſtare de tali delegatione, per [illegible] exemplum [illegible] originale d[illegible]gationis [illegible] *de* [illegible] *cript.* [illegible] Rom[illegible]

[illegible]

[illegible]

[illegible] iudicatam, vt ſupra [illegible] eſt: & cum præſu[illegible] datur ſuper tranſitum in rem iudicata [illegible] in fal[illegible]m, [illegible] fundame[illegible] omni[illegible] [illegible]unt *lex* [illegible] *prima* [illegible] *hactenus in fi.* *cum l. eq. ff. de aqua plu. arc. l. nam arc. l.* [illegible] *ff. quod vi aut clam l. legi ff. de except. rei iud.* [illegible] *fundus ſub conditione l. qui vndus. ff. de leg. 1.* [illegible] *prim. [illegible] l. vulnerato. cum Paulus. 1* [illegible] *& c. miramur. 61. diſt.* & ita [illegible] poſito [illegible] arguunt Iac. Butr. Sal. & Ful. *in l. mancipia C. de ſeru. fugit.* Rom. in [illegible] 186. *Statutum* [illegible] [illegible] *ec. in 1 conſtitutus. col. 2 de reſcript. & alibi ſæpe.* & profecto ſi fundamentum do. G[illegible]ſtandi eſſet verum, ſ[illegible]queretur correctio ſ[illegible] communis, quod nunquam dici poſſet de nullitate, poſt lapſum fat[illegible]liu, & quod [illegible]ntentia nulla [illegible] tran[illegible] in rem iu[illegible]icatã, ſemper enim dici poſſet, omnia ſolennia præſumuntur præceſſiſſe, quæ requiruntur ad validitatem ſententiæ, quod eſt pluſquam abſurdum. In duobus enim caſibus ſtatur verbis enunciatiuis ſententiæ, in quibus exprimũtur neceſſaria ad validitatem: primus caſus eſt, qu[illegible] [illegible]tur ſententi[illegible] contra partem præſentem, & non contradicentem, nam iſto caſ[illegible] præſumitur pro delegatione & legitimatione perſonarũ, quæ pa[illegible] præſens & tacens, quando fit mentio de legitimatione aut mandato, cenſetur [illegible] eſſe, Bar. in *l. 1. C. de relat.* Mod. [illegible] *l. qua dotis. ff. ſolut. matrim. & alibi ſæpe* ¶ Secundus caſus eſt, quando pars præſens ſententiæ, appe[illegible]lauit quidem & contradixit, [illegible] appellationem proſecuta non eſt: & iſto caſu dico, quod ita demũ præſumitur pro ſentẽtia, ſi valida ſit, & habeat eius ſubſtantialia, ratio, quia per contradictionem tranſlatũ eſt onus probandi ſolennia ſententiæ in partem, quæ obtinuit, quæ cũ fundet ſe ſuper ſententia, tenetur de ea fidem facere in forma legitima, & licet pars nõ proſequatur appellationem, ex hoc non cenſetur ſublata nullitas, patet, quia vbi appellat quis à ſententia nulla, & nullitatem æque principaliter proponit, licet inſtantia fatalium peremta ſit, non tamen impeditur nullitatem proſequi, & ſi nullitatem incidenter deducit cũ appellatione, deſerta appellatione licet nullitatem ex eadem inſtantia proſequi non poſſit, poteſt tamen alio iudicio & in alia inſtantia nullitatem principaliter proponere, & proſequi, vt per Bald. in *conſ. 492. in cauſa vertente inter Blaſium. col. 3. poſt medium. verſ. eſt videndum vlt. lib. 3.* Paul. de Caſt. *in conſ. 288. ad primum reſpondetur in 2. dubio libro* 1. Card. in *clem. ſi appellationem. in 5. quæſt. de appellat.* Soc. in *conſ. 10 col. fi. libro* 4. Corn. in *conſ. 323. in fi. libro* 4. Decius in *capi. cum ſit Romana. col. 7. in fi. verſi. ſed tamen his non obſtantibus. de appell.* vbi Decius pro hoc allegat textum in *c. licet de ſentent. excom. libro* 6. tradit etiam Iaſon in *l. 1. in fi. prin. de ſeruis* ſi deſerta appellatione non deſeritur cauſa nullitatis. ergo eſt falſum omnino fundamentum domini Gaſtandi: quod vbi appellatio eſt deſerta, præſumantur ſubſtantialia requiſita ad validitatem ſententiæ: ſi enim præſumerentur, & ſententia omnino tranſiret in rem iudicatã, nũquam poſſet dici de nullitate. Dicendum eſt igitur, quod præſumatur pro ſententia, poſt lapſa fatalia, reſpectu rectitudinis & iuſtitiæ, nõ reſpectu ſolennitatis, rectitudinis & ſubſtantialium, ad validitatem ipſius ſententiæ: facilius enim præſumitur pro ſententia in his quæ reſpiciunt iuſtitiam cauſæ, prout ſunt teſtes, inſtrumenta, & aliæ probationes, quam in his, quæ reſpiciunt ſolennitatem ipſius ſententiæ: Baldus in *conſ. 492. in cauſa vertente inter Blaſium. column. 1 in fi. verſi. modo reſtat reſpondere. libro* 3. Socinus in *conſi. 158. column. 3. in fi. verſi. ſed ego etiam reſpondeo clarius. libro* 2. Decius *in cap. ſuper eo column. 1 in fi. verſi. quartus & vltimus caſus eſt. de appellat. & in cap. conſulta[illegible] ante fi. eodem titulo.* & pro hac concluſione, quod non præſumatur pro ſententia lapſis fatalibus in his, quæ reſpiciunt ſolennitatem & quorum defectus vitiat ſententiam, [illegible] ratio

8 naturalis & fundamentalis iudicio meo: † nam in cauſa nullitatis fatalia non habentur in conſideratione, ſed tantum in cauſa iuſtitiæ vel iniuſtitiæ, ergo lapſus fatalium non debet cõſiderari, quo ad cauſam nullitatis, ſed tantum quo ad cauſam iuſtitiæ vel iniuſtitiæ: ſicut in ſimili dicimus, quod duplicitas vinculi nõ conſideratur, in quibus alterum tantum vinculum operatur, puta in ſucceſſione feudi, frater vtrimque coniunctus non excludit conſanguineum tantum. quia in ſucceſſione feudi coniunctio ex parte matris, in his facit Baldus in *cap. 1. de grad. ſucceſſ. in feud. conſ. 170. col. 2. in conſi. 304. in fi. libr. 2. in conſi. 54. Proponitur, quod quidam nobilis. & in conſi. 222. libro* 3. & profecto eſſet quædam repugnantia, quod poſt lapſum fatalium ſententiæ, ſolennia & ſubſtantialia præſumantur, & quod non obſtante tali lapſu de nullitate dici poſſit, ſolum igitur præſumentur talia ſolennia & ſubſtantialia, quando pars fuit præſens, quando enunci[illegible]bant [illegible] ſententia, & non contradixit [illegible]pellauit [illegible] cus [illegible] ad [illegible] & a[illegible]pellauit, licet appella[illegible] n[illegible] proſecuta non [illegible] [illegible]inuliter æquiuocauit in h[illegible] cauſa dominus Bernardin[illegible] C[illegible] aduocatus hominum Montis Oroxi [illegible] dum dixit p[illegible] pet ſententiam in antiquis, quando eſt [illegible] p[illegible]um te[illegible]m[illegible] annorum, dicendo communem opini[illegible]nem [illegible] nam iſtud procedit in materia prob[illegible]oria, q[illegible] ndo agitur [illegible] probatione et leuiores ſufficiant, puta, quod admitt[illegible] teſt[illegible] de auditu, quod fama plene probet & ſimilia, vt habetur [illegible] *non aliquid. C. de iure delib. & in cap. cum cauſam. de probat.* ſecus quando agitur an præſumatur pro ſententia. quia tunc non requiritur illud tempus, ſed inſpicitur ſolum, an pars fuerit præſens ſententiæ, & non cont[illegible] [illegible]t nec appellauerit, vel ſi appellauit non fuerit proſecuta, ſecu[illegible]um ea quæ ſupradiximus. quatenus attinet a[illegible] ea, [illegible]uæ reſ[illegible] iuſtitiam vel iniuſtitiam. De quibus omnibus [illegible]ius ſcribo [illegible]am tractatu meo. Poſſet tamen ſuſtineri d[illegible]um C[illegible] oneris probandi, vt negatiua, quod ſolẽn[illegible]te aut [illegible] liam dici non interuenerint, probari [illegible]eat p[illegible] allegantem nullitatem, quando ſumus in antiquis centum annorum quæ ſi tunc ſit præſumptio vehemens pro ſententia, niſi de [illegible] ot[illegible] rio doceatur. modus autem probandi talem negatiuam, e[illegible] productio actorum, ſuper quibus fuit pronunciatum. poſſet etiam procedere dictum domini Corui, quando agitur co[illegible] tra tertium abſentem, nec citatum. ¶ Aliter tamen reſpondeo, ad motiuum domini Gaſtandi in ſuo conſilio deciſiuo, quod regula, quæ habet, quod præſumatur pro ſententia in antiquis, videtur procedere in his, quæ fiunt aut geruntur coram iudice, ſecus in aliis, ideo † mandatum non præſumitur 9
ex temporis antiquitate, quia mandatum non fit coram iudice. Baldus in *l. 1. C. ſi ex falſis inſtrumentis. & in l. prima Cod. de rebus non alienandis.* Alexandr. in *l. ſecundum. ff. de verborum obligationib. in l. qui in aliena in princip. ff. de acquirenda heredi[illegible]ate.* Felinus in *cap. ſicut. columna 17. verſicu. 6. aduerte. de re iudicata.* Decius in *conſilio 213. columna 2. verſicul. vlterius in tali inſtrumento.* Curtius Iunior in *prima parte tractatus feud. quæſt. 1. colum.* 1. Socinus in *conſilio 254. columna 2. poſt medium. verſicul. præterea non ſumus in caſu certo. libro.* 1. in qua re tamen Doctor. valde variarunt. ¶ Sed delegatio I[illegible]dicis non fit coram iudice, imo ante initium litis, ergo, &c. ¶ Reſpondeo etiam aliter ad aſſertum motiuum domini Gaſtandi quod vna præſumptio tollit alteram, & fortior tollit debiliorem. *leg. diuus. ff. de reſtitut. in integr. leg. non ſolum ff. de ritu nuptiarum. leg. excipiuntur. §. ad ſolennia. leg. qui duos § ſi Lucius.* vbi Socinus in 4. *notabil. ff. de rebus dubi. capitul. ex an, tuiſſe. qui filii ſint legitimi. capitul. literas. de præſumptionibus.* ſed licet præſumatur pro ſolennibus ſententiæ in antiquis iſta tamen præſumptio videtur elidi ex eo, quod nunquam fuit obſeruandum ſecundum formam & tenorem ipſius ſententiæ, imo ſecundum deſiderium hominum Montis Oroxii, Pro hoc, quod ſcribit Bald. *in conſi. 17. Quidam tabellio. libro primo.* quod præſumptio falſi ceſſat inſtrumentum venditionis, quando emptor fuit in poſſeſſione rei venditæ lõgo tempore: & obſeruantia ſubſecuta multum cõfirmat fidem inſtrumenti, quando ſecundum eius tenorem diu fuit obſeruatum. Bal. *in conſ. 401. Quæritur an per ſolam diffamationem in fi. lib. 5.* ergo eodem modo per contrariam obſeruationem multum diminuetur de fide, & validitate ſententiæ, vt contrariorum eadem ſit diſciplina. *l. 1. ff. de his, qui ſunt ſui vel alieni iuris ſint.* ¶ Poſtremo, vbi valida eſſet aſſerta ſententia, citra veritatis præiudicium; contra eam præſcriptum, videtur per contrarium v[illegible]ſum ſpacio tanti tẽporis, nec dicatur homines Montis Oroxii fuiſſe in mala fide, cum ipſi ſemper contradixerint & contradicant tali ſententiæ, nec ex ea ſentiant ſe grauatos in cõſcientia. Infertur ex præmiſſis, quod ſicut prima ſententia fuit & eſt nulla, ita & ſententia eam confirmans, lata in cauſa appellationis ex conſilio periti, dicitur nulla, quia error, qui fuit in prima ſententia fuit & in ſecunda eam confirmante, vt per Alex. in *conſ. 79. col. 1. ver. bene fateor. lib. 2.* Aretin. *in conſ. 75. Diligenter & mature. col. 3. verſ. ſecundo præmitto.* vbi allegat Innoc. & Doc. in *ca. 1. de confirm. vtil. vel inutil.* vbi Dec. *col. 6. poſt med. ver. & iſta concluſio limitatur.* in quibus [illegible] ci[illegible] habetur, quod vbi ſecunda ſententia confirmans primã, laborat eodem morbo, quo prima, & cauſa nullitatis, quæ eſt in prima, limitat etiam in ſecunda, tunc ſecũda ſententia eam nulla dicitur: ſed hic prima ſententia dicitur nulla, ex defectu iuriſdictionis, rurſus ex defectu legitimationis perſonarũ, quia nõ apparet de mandato hominum Montis Oroxii, nõ apparet ee[illegible]

tam

[illegible]

S V M M A R I A.

[illegible]

CONSILIVM CCLXVII

Pro Dominico Maſſerano de Santliano, contra heredes Franciſci Maſſerani ex eodem.

D[illegible] o ſubſidio ex c[illegible] poſtulato. Dominicus Maſſerani [illegible] ab heredibus Franciſci Ma[illegible] florenos trecentum & quinquaginta, [illegible] & quos idem Franciſcus promiſit reſtitu[illegible]. Examinati ſunt quinque teſtes, quorum quatuor depoſuerunt de confeſſione extraiudiciali, d. Dominici. Quæritur, an dicatur probata intentio ipſius Dominici actoris ¶ Videretur dicendũ, quod nõ, quia iſti quatuor teſtes videntur ſingulares, loquentes de confeſſione facta diuerſis temporibus & locis, ita, quod in confeſſione vnius & eiuſdem temporis ac loci, nulli videntur conteſtes, ideo teſtes varii in loco & tempore, dicuntur ſingulares deponentes de diuerſo facto, in diuerſitate temporum, tradit Cyn. in *l. teſtium colum. 6.* & ibi Bald. *conſ. 5. C. de teſt.* Anton. de Bur. & Doctor. in
2 *capit. cum cauſam quæ inter Archiepiſcopum. column. 1* [illegible] *eodem titu.* Bal. in *conſ. 39 proponitur quod* [illegible] *colum. 2. circa med. libr. 3. & conſ. 459. Viſa dicta petitione. colum.* [illegible] *poſt med. verſi.* [illegible] *libr. 4.* Alexandr. in *conſ. 116. libr.* [illegible]. Aret. in *conſ.* [illegible] *colum. 3. in fin verſicu. interrogatus igitur.* Quando enim teſtes loquuntur de diuerſis actibus, probatio videtur dubia & incerta, quia neſcitur quis ſit actus, de quo [illegible] ex quo [illegible] pluribus loquuntur, ex ipſis diuerſis fac[illegible], diuerſis loc[illegible] & tempore, itam incertitudinem & dubietatem ex teſtium ſingularitate arguit Alexand. in *conſ. 64. colum. 2. circa med. libr. 6.* poſt Sal[illegible] in *l. teſtium* [illegible] *9. quæſtion. C. de teſtib.* vbi propterea, quod tales teſtes ſingulares non coniunguntur, etiam ſemiplene probant, & quod non coniungantur tradit idem Alexan[illegible] in *conſ. 32.* [illegible] *conſ.* [illegible] *circa fin. in conſ. 21. colum. 2. circa* [illegible] *4.* & [illegible] eſt quod dicitur, quod vbi teſtes ſunt ſingulares [illegible], quamuis Bald. in *l. de q*[illegible] *colum.* [illegible] *poſt me*[illegible] *verſi* [illegible] *ff. de leg.* [illegible] *C.* [illegible] Alexand. [illegible] *conſ. 34. colum. 2.* [illegible] *libro 3.* Decius in *conſ.* [illegible] *colum. 4. circa fin. & in conſ. 189. colum. 4. circa med.* & [illegible] apparet [illegible] teſtis probat ſemiplene, quando [illegible] *ff. de* [illegible] teſtes ſinguIares, [illegible] probant [illegible] per con[illegible] impediunt & [illegible] ſtatum [illegible] ſum lacer[illegible] ratum eſt, deo non [illegible] *in conſil.* [illegible] ¶ Sed [illegible] ac aliis [illegible] libus, qui addu[illegible] contrarium puto de iure verius, qu[illegible] ter dicatur probata [illegible] per duos [illegible] Vinc[illegible] Caglian[illegible] de[illegible] M[illegible]

[illegible]

[illegible] ¶ [illegible] quantitatem [illegible] confeſſion[illegible] dem quantit[illegible] conf[illegible] teſtium [illegible] probare [illegible] Butr. in *cap.* [illegible] teſtium apparet [illegible] durante tempore [illegible] dicatur facta [illegible] *verſi. de mala fide etiam lib. 3.* ¶ Tertio [illegible] triplex [illegible] ponitur [illegible] vnico [illegible] quod teſtes ſinguIares nihil omnino [illegible] dicitur ſingularis [illegible] factorum [illegible] nus teſtis [illegible], quod vidit [illegible] aliter, quod in vico [illegible] potibus, & [illegible]

[illegible]

[illegible]

[illegible]

SVMMARIA

[illegible]

CONSI[illegible]M [illegible]

Prom[illegible] Maria reb. Iano. Cata[illegible] ind. [illegible] ei. rum, [illegible]s Vener. D[illegible]m. Bartholo[illegible]

D[illegible]

[illegible]

[illegible] ... pluribus ad ... mator bu 4 [illegible]

[illegible] ... manere cum ... gnis ob ..., quod dicentur et alimenta ... ra domum, etiam alia ratione, quam ... pudicitiæ, id ... odium naturale ... priuignos, alle ... de Ar ... in l. penult. ff. ... pupil. ... vbi etiam not. ... Bal. ... & ſequitur Iaſon in d. l. diuortio in princ. col. 7.

5 ff. ſo[luto] ma[trimonium]. ¶ Septimo, † ex ... dico, quod vidua hæc, habe ... ſt ... ſtam ... cedendi a domo mar ... legem ... domo ... tare non poſſit, quia vult ſecretam habi ... quod ſeculi ... lo- ... vbi quod iuſta ... non ... in domo ... us inſtituit ext ... neos, & mulier vi ... ſed priuigni ... tur extranei ... ¶ ... pro hac opinione ... Specu ... cogitur perci ... fuerit, q ... perp ... ne contentio ... non porcio ... commidat eam coher ... in ... it heres, ergo vide ... velle, q ... in domo ... pere, alias ... vel extraneus, quia etiam ... heres ... cogitur cum eo in ... ſtare, quan ... non poſſe ... propter contentionem & rixa, ergo ſi talia differentia quando ... heres, & quando extraneus, quam diſcretam ... conſtituere, dicendum eſt, quod vbi extraneus ... heres ... manet habitans, ... non cogetur vidua cum extraneo agere, qu ... cum ... non commode aut honeſte poſſit habitare. ¶ Nonò, conſidero, quod omnes Doctores in hac ma ... conueniunt, quod ſola ſiniſtra ... honeſtatis dicitur cauſa ſufficiens, cur dicatur mulierem non poſſe in domo mariti manere ... cionem, adducit Bald. in l. 1. ... um. 2. circa med. verſ. ... dubitatur ... C. ... lege ... in d. l. ... C. de cond. inſ. r. Ang. in d. §. fuerat. in ... 6 ... ſuſpicio ... animo ... & ... paſſiones ... ſed ea, quæ in animo conſi... periuramentum, iuxta gloſ. ... in §. ... actio. ... Mod ... ſtandum videretur ... nouercæ, ... in ſuſpectum habeat: quod maxime ... quia ſuſpicio eiuſmodi ... ſolet ex va-

[illegible] ... ſecundum ... operator ... ¶ Secundo, principal ... itus 5 ... de menſe Septembri, co ... pendentibus, an heredes mariti lucrari debe ... conſiſtentium in prædiis. Ad ... quod ... tempus contracti matrimonii ... honorum, quia heredes mariti lucrantur ... pro rata ... qui durauit matrimonium, & ſuſt ... onera matrimonii. verbi gratia: contractum eſt matrimonium ..., & tradita dos de menſe Maii, & ſi ... onera matrimonii ſuſtinuit maritus, pro tertia parte vltimi anni, & diuidi debent fructus vltimi anni in tres partes, & tertiam partem percipiant heredes. leg. de diuiſione. vbi Scriben. Digeſt. ſolu. to matrimon. Ideo videndum eſt de tempore contracti matrimonii, & traditionis bonorum dotalium, & præmiſſa procedunt tam in fructibus perceptis, quam pendentibus, de tempore ſoluti matrimonii. ¶ Et hic aduertendum, quod ſi mulier feciſſet aliquas expenſas in bonis iſtis dotalibus, in primo anno contracti matrimonii, tales expenſæ detrahi poſſunt de fructibus vltimi anni, *iuxta l. fructus ... ibi not. ff. ... ſol. matrim.* ¶ ... dubitatur, an pro liberis pupillis dictæ viduæ peti poſſit diuiſio honorum communium cum liberis prioris matrimonii. Breuiter, ſi verum ſit, quod ponitur in facto, id eſt, quod iſta diuiſio ſit futura vtilis ipſis pupillis, & doceatur de tali vtilitate, puto diuiſionem peti poſſe: nam licet minor prouocare non poſſit ad diuiſionem, regulariter *l. ſi pupillorum ff. de rebus eorum.* tamen non procedit, quando expedit pupillo ... minori ... fieri. gloſ. & Bartol. *in l. iubemus nulla. C. de ſacroſan. eccleſ. cum ſimil.* & per Alexand. *in conſil. 6. in fin. libr. 5.* vtilitas autem non breuis proponitur, quia dominus Bartholomæus vult domum tenere cum ſumptu non modico, viuendo de bonis communibus. Plane ſi pupilli eorum redditus ſeparato habeant, vectigal magnum in parſimonia conſequentur. Laus Deo, Virgini, ac diuo Ioanni Euangeliſtæ ac vniuerſæ cœleſtium curiæ. Sauiliani, die 26. Nouemb. 1545. Aymo Crauetta ex Sauiliano. I. V. D.

SVMMARIA.

1 *Dominium pecuniæ numeratæ, non eſt difficilis probationis.*
2 *Deferens pecunias, pr[æſ]umitur dominus earum, ex ſola delatione & poſſeſſione.*
3 *Identitas perſonæ facilius probatur, quam identitas rerum.*
4 *Verisimile ... dicitur cognata natura.*
5 *Fal[ſa] d[e]monſtratio non vitiat, ſi alia ... vera ſint.*
6 *In caſibus, in qu[ibus] ... agens ... de dominio, & in quibus dominium eſt de ... actoris, ſi probet qualitatem rei.*
7 *Cautio debet præſtari per eum, qui tenetur ad aliquid ſoluendum vel reſtituendum.*
8 *De futura ... tertij ... ratio haberi non debet.*

eſt [illegible]

[illegible]

quaſi.189. ¶ [illegible] concludo [illegible]

[illegible] Aymo Crauetta [illegible] Sauiliano I.V.D.

SVMMARIA.

1 [illegible]
2 [illegible]
3 [illegible]
4 [illegible]
5 [illegible]
6 [illegible]

CONSILIVM CCLXX.

Pro vniuerſitate Vallis macrae, contra communitatem & homines Vallaris ſancti Conſtantii, Marchionatus Saluciarū.

Diuino ſubnixus [illegible] corde [illegible] In cauſa [illegible] Conſtantii, dubitatur de pluribus [illegible] an cum [illegible] in qua [illegible] de plano ſine ſtrepitu & figura iudi[illegible] culpa [illegible] 1 [illegible]

Nu [illegible]

[illegible]

[illegible] *ler. non reſiden.* [illegible] Abb. [illegible] buſin cauſa [illegible] dictum & eius [illegible] non cenſetur [illegible] & neg [illegible] eſt pro [illegible] eſt quod [illegible] eſt, negl [illegible] Al [illegible] re in [illegible] tradit idem A [illegible] *in fin. de offic. d. leg.* [illegible] *c. ex literis. circa q. 1. fallentia.* & licet [illegible] quod [illegible] ſed relinquit cogi [illegible] opinion videtur [illegible] *in verbo, provocatio.* [illegible] ponamus quod [illegible] interpellatio contra iudicem [illegible] tanquam vnicam tenet Dec. [illegible] *in fin. de offi. de leg.* [illegible] quod non apparet de aliqua interpellatione contra iudicem. praeterea [illegible] videtur facienda licet [illegible] pro tribunali. Roman. *in conſil. 48 in fin.* ¶ Ex praemiſſis abunde ſatis probatum [illegible] peremptam eſſe inſtantiam culpa partis agentis, quae non curauit acta [illegible] ad iudicem nec eum interpellauit [illegible] expediret. illud tamen [illegible] non poteſt [illegible] culpa partis agentis nō obtinendo [illegible] principe prorogationis inſtantiae, quas literas conſueuit princeps [illegible] & qui [illegible] ita culpa [illegible] R [illegible] *Quia* [illegible] *colum.* [illegible] *per text. in l. 1.* [illegible] *ff. de* [illegible] *in l. 3.* [illegible] *Digeſt. de* [illegible] A. [illegible] Alex. [illegible] *in l. apud Iulia.* [illegible] *ſi. Digeſt. de leg. 1.* D. [illegible] ¶ [illegible] ndum eſt [illegible] dubium [illegible] praeiudicium veritatis peremptae inſtantiae [illegible] culpa [illegible], an tempus [illegible] quae in [illegible], ſed iudex [illegible] ¶ [illegible] omiſſi [illegible] quae adduci poſſent, [illegible] Doctor. [illegible] *c. ſpon.* [illegible] Cyn. Ray. [illegible] Alexand. & Modern. *in d. l. properandum. § ſin autem vero* [illegible] *in 1. not. Codic. de iudic.* Addo Bald. *in conſ.* [illegible] *In primis* [illegible] *lib. 4.* vbi quod currit tempus inſtantiae [illegible] iudicis, [illegible] reſtitutio in integrum, quod eſt [illegible] ordinarium cum ſit conſultum [illegible] per [illegible] nouae inſtantiae, per tex. *in d. l. ſi* [illegible] *glo. & d. authent. ſi* [illegible] *appellationem in verſic. immo. Cod. de tempor. appel.* & dicit Bald. *in d. l. conſil.* [illegible] quod [illegible] ſententia poſt [illegible] inſtantiam eſt ipſo iure nulla non obſtante tali impedimento. Idem voluit Paul. de Caſtr. *in conſil. 71. In cauſa appellationis. colum. 2. in princ. verſic. ſed in* [illegible] *prima inſtantia.* [illegible] Roman. *in d. conſil. 174.* [illegible] *column. 2 circa medi. verſic. ex quibus omnib.* Fel [illegible] *venerabilis. colum. 2. verſ. 2. conclu. de iud.* vbi [illegible] videtur Fel. velle licet impedimentum iudicis eſſet [illegible] quia impeditus multitudine [illegible], licet relinquat [illegible], ſed ita diſputatio hic non eſt neceſſaria cum non appareat de aliquo impedimento iudicis iuſto [illegible] iuſto. [illegible] ſtatur de reſtitutione in integrum aduerſus lapſum inſtantiae ob iuſtum iudicis impedimentum, cum [illegible] poſt inſtantiam pere[illegible].

7 ¶ Itaq; concludo in hoc tertio dubio † ſententiam latam poſt inſ[illegible] peremptam, nullam eſſe ipſo iure, licet peruliet in[illegible] [illegible] *rem tempus, cum ſimil.* [illegible] Alexand. *in conſil.* [illegible] ¶ [illegible] dubium [illegible] nulla lata poſt [illegible] inſtantiam [illegible] [illegible] *iudex poſtea q[illegible]* [illegible] loquamur in iudice appellationis [illegible] deuoluit totam [illegible] a iudice in appell [illegible] quod iudex appellationis [illegible] cognoſcere & pronunciare [illegible] principali ſententiam [illegible] *nt. in cap. cum* [illegible] & [illegible] *quan-* [illegible] Bartolus *in l.* [illegible] *ſi datur* [illegible] *prouo* [illegible] *dam inſ. & in leg. iudex colum.* [illegible] *Dig.* [illegible] *lo 3. 2. 3. colum. fin. libr.* ¶ Sed praemiſſis non obſtantibus, qu[illegible] ſententia, lata poſt inſtantiam peremptam [illegible] reformari ex iiſdem actis, [illegible] tia perempta, acta [illegible] corruunt. *l. 2. ff.* [illegible] *l. 2. Cod.* [illegible] *eod.* Itaque ſi acta ſiunt nulla [illegible] impoſſibile eſt, quod confirmetur aut reformetur [illegible] quia [illegible] iudicatum, [illegible] *l. prolatam C. de ſent.* & pro hoc adduco doctrin. Bar. [illegible] *cum quaerebatur. ff. de re iudi. & in d. l. ſi vt proponis. C. quomodo* [illegible] *de iudic.* in quibus locis concludit Bar. quod vbi nullitas ſententiae reſpicit omnia acta vniformiter, puta, quia lata contra maiorem [illegible], aut ſit non conteſtata, non poteſt reformari talis ſententia nulla, ex [illegible] inualidis, quia ſic reperiretur lata ſine actis. ſi vero nullitas non reſpiciat omnia acta, quia acta quidem ſint valida, ſed ſolum reſpiciat actum ipſum [illegible] quia ſit [illegible] vel contra dominum, cum ferri deberet contra procuratorem, ita quod ſolus actus ſententiae ſit nullus, & tunc poteſt ſententia nulla reformari ex eiſdem actis. Idem voluit Bald. *in conſil. 298. Praemittendum eſt ad eu[illegible]* [illegible] *lib. 3.* Alexand. *in conſilio 79. libro 2.* Corn. *in conſ. 324. column.* [illegible] *libro 1.* Sed nullitas reſultans ex peremptione inſtantiae, reſpicit omnia acta vniformiter, quia vt dictum eſt, perempta inſtantia corruunt acta omnia, nedum actus ſententiae, ergo impoſſibile eſt reformari ſententiam, ſuper eiſdem actis inualidis. ¶ Secundo, ſententia nulla reformari non poteſt, quando nullitas, quae erat in prima inſtantia, non ceſſat in ſecunda. Alexan. *in d. l. conſilio 79. columna ſecunda. in conſilio 112. circa fin. libro 2. & in conſilio 53. columna tertia poſt medium libro quinto.* ſed nullitas, quae erat in prima inſtantia, propter eius peremptionem durat ſemper, adeo, vt neceſſe ſit aliam inſtantiam de nouo inchoari, ergo, &c. ¶ Tertio, quod talis ſententia nulla, propter peremptionem inſtantiae reformari non poſſit, probatur ex no. per Bartol. & Doctor. *in d. l. properandum. in princip. colum. 2. Cod. de iudic.* & per Felin. *in d. cap. venerabil. colum. 4. verſic.* [illegible] *de iudic.* vbi quando inſtantia eſt perempta, debent omnia acta de nouo repeti, alias ſententia ferri non poteſt, ſi repetitio actorum eſt neceſſaria, ergo apparet, quod ex eiſdem actis reformari non poteſt ſententia, lata poſt inſtantiam peremptam, ſed opus eſt vt [illegible] repetantur. ¶ Quarto, in terminis & in iud[illegible] duo, quod ſententia, lata poſt inſtantiam peremptam, confirmari aut reformari non poſſit, tradit Bald. *in d. conſil. 298. Praemittendum eſt ad euidentiam. in fin. libro tertio.* vbi Bald. rationem aſſignat, quia poſt lapſum tempus inſtantiae, iudex in ea cauſa iuriſdictionem non habet, ſed habetur vt priuatus, conſtat autem confirmari non poſſe ſententiam priuati hominis. Pro hoc adduco Roman. *in conſil.* [illegible] *colum. 2. circa medium. verſicul. ſoli enim prin.* vbi Rom. conclud. ſententiam nullam, ex defectu iuriſdictionis, [illegible] ſolo principe poſſet cōfirmari, ſed ſententia, lata poſt inſtantiam peremptam, eſt huiuſmodi, ergo, &c. A[illegible] in terminis, quod ſententia, lata poſt peremptam inſtantiam, confirmari aut reformari non poſſit ex iiſdem actis, aut antiquis, adduco Alex. expreſſe [illegible] ſir-

[illegible]

Decem[illegible]

SVMMAR[illegible]

[illegible] *reſi* [illegible] *tamque hand* [illegible]

[illegible]

[C]ONS[I]LIVM CCLXXI.

Pro nobili Antonio Lenini Burgenſe Saviliani, contra nobilem Andream Gautene, ex eodem.

D[I]V[illegible] ſ[u]bſidio ex corde poſtulato V[illegible] habent. Item ſtatuerant & o[illegible] quod quiliber [illegible] Saviliano v[illegible] ſtrictu, vel [illegible] nobilem, exiſtentem [illegible] dictarum [illegible] Saviliani, teneatur ipſam [illegible] proximiori [illegible] ipſis nolentibus emere, teneatur [illegible] conſortio, pro precio quo [illegible] [illegible] & mediante [illegible] ſe nullus, & poſſit propinquior [illegible] ſex menſes: & caſu, quo propinquior [illegible] poſſit conſors hoc facere [illegible] ſtad dictum termin[illegible] verb[illegible] ſtatuti ita poſitis. Spectab. domin[illegible] magn[illegible] domini Hiero[n]ymi C[illegible] Polunghe [illegible] filia quondam ſpec. dom[illegible] ne artium & medicinæ D[illegible] toris, no[illegible] d[illegible] vnam domum in [illegible] Savili[illegible] quond[illegible] ex [illegible] Cabotti, deinde eo mort[illegible] domum [illegible] vend[illegible] dom. Ant[o]nio Len[illegible] Bu[illegible] [illegible] ſtea dom. Ioanne Iacobus Gautena pet[illegible] [illegible] Lenini, vigore ſtatuti [illegible] [illegible] ſcutorum ducentū ſolis [illegible] termino ſtatuti [illegible] allegando [illegible] annum dictarum vend[illegible] ſed [illegible] Sanctitatis poſtea [illegible] demum [illegible] Gautena [illegible] fratre [illegible] ceſſionem [illegible] am [illegible] ad ſe [illegible] [illegible] & nuuum faciend[illegible] ſe [illegible] vivante eum [illegible] ¶ [illegible] dicere tur dicendum [illegible] ſer[illegible] licet [illegible] B[illegible] Sa[illegible] [illegible] undus Sa[illegible] *aſſumpt* [illegible] filia [illegible] per-

[illegible]

dinentu[illegible] *protui* [illegible] lac[illegible] [illegible] ſi [illegible] ¶ Sed [illegible] po[illegible] don in Bona [illegible] ſecuta eſt [illegible] *pende* [illegible] pa[illegible] ipp[illegible] dito, qu[illegible] que [illegible] in pe[illegible] bonis, ſicut [illegible] *ſi poſſet dubitari* [illegible] *ſin ff.* [illegible] ho[illegible] Alexand[illegible] [illegible] 44 *colum* 4 [illegible] *conſil* [illegible] 192 [illegible] [illegible] *in conſil* [illegible] cla[illegible] Savili[illegible] ¶ [illegible] etiam ſi [illegible] tor [illegible] [illegible] pr[illegible]

[illegible]

[illegible]

ctas, [illegible] non plus valebat, propter [illegible] ne cem-[illegible] continebatur. ¶ Sexto reſpondeo, [illegible] de conſuetudine Franciæ [illegible] non datur reſtitutio [illegible] aduerſus [illegible] tempo[illegible] cum conſtituat [illegible] Bar[illegible] conſuetudine [illegible] 14. col. 1. [illegible] de Francia [illegible] cum habe. [illegible] & in quantum Gal[illegible] eſt, concedi reſtitut[illegible] ſo, vbi de damno non agitur, nec p[illegible] loquens in minore extendatur ad maiorem [illegible] vult [illegible] læſionem probari quæ læſio non videtur [illegible] non reſpectu[illegible] in quo maioribus minime [illegible] ¶ Septimo reſpondeo, poſito & non conceſſo, qu[illegible] ſtitutio in integrum [illegible], ex cap[illegible] tempotis, ad[illegible] quia [illegible] hic cauſa ignorantiæ, qu[illegible] præſumptione, venditione [illegible] Bonam, [illegible] quondam Ioanni Ferrero, [illegible] probatu[illegible] ſcientia ex conuerſatione [illegible] loco, ideo forenſis [illegible] in loco [illegible], non poteſt prætendere ignorantiam ſtatuti [illegible] in quo conuerſ[illegible] Bar. & Doct. [illegible] de ſum. Trinit. & fide catho. Alexand. [illegible] lib. 1. vbi, quod [illegible] vnius anni, & de frequentante locum, quod præ[illegible] loco, tradit Alexandrin. in con. [illegible] lib. 4. [illegible] probatum fuit de [illegible] & [illegible] in loc[illegible] ¶ [illegible] undum [illegible] ſcientia ex vicinitate loci, [illegible]

[illegible]

[illegible]

SVMMA[illegible]

[illegible]

CONSILIVM CCLXXII.

Pro nobili Federico Vacha ciue Saluciarum, contra Bernardinum Ghiezum Mercatorem, & ciuem etiam Saluciarum, conſilium legentibus commodiſſimum.

DIVINO ſubſidio ex corde poſtulato. Nobilis Bernardinus Ghiezius ciuis Saluciarum fideiuſſit pro magnifico domino Ioanne Iacobo Barba ciue Nouarienſi, in cuius o[illegible] ſeq[illegible]ſtrum factum erat, ad inſtantiam no. domini Federici Vach[illegible], in qua fideiuſsione promiſit ſe [illegible] actuum & [illegible]ratuum, [illegible] prætatus dominus Ioannes Iacobus Barba [illegible], & [illegible] omne ſoluet prætextu omnium & quorumcunque, pro quibus ſequeſtrum factum e[illegible] principalem conſtituendo [illegible] renunciatione legis, de principali prius conueniendo, [illegible] nouæ conſtitutionis de fideiuſſoribus cum iuramẽ[illegible]. Deinde memoratus dominus Federicus iudici[illegible] in pro[illegible] uerſus fideiuſſorem prædictum, cora[illegible] magnifico [illegible] excellentiæ marchionalis, concludendo ad ſatiſfa[illegible] ſaccorum quingentorum grani ſiue [illegible] quos [illegible] domino Ioanni Iacobo Barbæ remiſiſſe cum pa-

[illegible] aliquo certo pr[illegible], aut ſumus in [illegible] d[illegible] gens impl[illegible] dicit[illegible] in[illegible] gi, cu quantu[illegible] periculo [illegible] niente Apul[illegible] argu[illegible] aduoc[illegible] fideiuſſor[illegible] dita [illegible] fideiuſſor cauit [illegible] haberetur [illegible] pro [illegible] tradit[illegible] ſis ſeque[illegible] ut ita cautum [illegible] ſtantibus, quæ vt eo obſtare non [illegible] iure verius [illegible] quod [illegible] agi po[illegible] prout actum leg[illegible]tur, & quo[illegible] mactonis. ſequ[illegible] §[illegible] quo[illegible] ille fideiuſſ[illegible] raliter, pro omnibus, quo[illegible] generaliter debet intel[illegible]igi [illegible] *de p[illegible] legum venditionis. §. de [illegible]. ff. de [illegible] author* [illegible] *cum ſimilib.* Itaque ſicut reus principalis con[illegible] ſatiſfa[illegible], quod in termino non[illegible] dic[illegible] videtur, po[illegible] ſic conuenit ipſum fideiuſſ[illegible] generaliter promittente[illegible] §Secun[illegible] quando [illegible] pli[illegible] ſe obligat aut fideiubet, cenſetur ſe obliga[illegible] ca[illegible] cauſam, quæ [illegible] natura negocii procedit. [illegible] *[illegible] & l. mora[illegible] ff. de [illegible]* [illegible] uende[illegible] de [illegible] communi[illegible] quando [illegible] quam[illegible] iudice po[illegible] dec[illegible] Paulus de Caſt[illegible] 23. *[illegible] colum.* [illegible] ſed [illegible] nebatur ex pacto, [illegible] eius [illegible], & ob [illegible] cauſ[illegible] eam in cauſam cenſetur fideiuſſor obligaſſe [illegible]

[illegible]

de [illegible] pluſe [illegible]
9 cem. [illegible] multa facta [illegible]
[illegible] procedi [illegible]
[illegible] ato, part [illegible]
[illegible] non oppo [illegible]
[illegible] ad [illegible] cuſandum [illegible]
[illegible] Bart. [illegible]
[illegible] colum. 2 [illegible]
[illegible] contra [illegible]
[illegible] debet prom [illegible]
[illegible] ¶ Dec [illegible]
[illegible] quod ille [illegible] non [illegible]
principal [illegible]
[illegible] do, [illegible] non [illegible] quod a [illegible]
[illegible] ſolum [illegible]
[illegible] do [illegible] quod [illegible]
[illegible] & [illegible] audiſſe [illegible]
[illegible] quenter ne ipſe [illegible] teneretur ad [illegible]
[illegible] oſtendat, ſua [illegible]
[illegible] nere, ex quo [illegible] principalis [illegible] erat
[illegible] us, &c. [illegible] fideiuſſor [illegible] ſolueret, quod
[illegible] ex d. Alex. in l. non ſolum § morte. col. fin. ff. de ope. no. nun. vbi,
quod [illegible] contra fideiuſſorem [illegible] ponent [illegible] in de diſcuſſione non ta-
[illegible] potest, quod [illegible] non intereſt [illegible] opponere, ex quo
de [illegible] quod di [illegible] o notandum
[illegible] ff. de pa. in [illegible] ¶ Addo eundem Alex.
in con. [illegible] & quod [illegible] Soc. & Ripa in l. [illegible] §. volun-
tatem. ff. [illegible] circa illum articulum an emptor, qui non [illegible]
[illegible] de euictione, ſi venditor non d[illegible] at, quod cauſam
defend [illegible] denunciat [illegible] ¶ Eodem modo [illegible]
poteſt contra iſtum fideiuſſorem, tua non intereſt opponere,
quod debitor principalis prius vocandus erat, quia [illegible]
[illegible] validi potuiſſet excipere quo minus condemnar[illegible]
[illegible] obationibus, [illegible] contra eum in negoc[illegible]
[illegible] de quibus in [illegible] diceretur ¶ Decimo quarto, domini [illegible]
[illegible] concedunt & [illegible] quod ſi fideiuſſo[illegible]
[illegible] ata faciendi & curandi, quod d[illegible] principali [illegible]
[illegible] fideiuſſor ex eo, quod illud non fecerit [illegible]
[illegible] mora [illegible]
[illegible] mus [illegible] omm[illegible] fideiuſſo-
[illegible] ut etiam ex [illegible] ne parti [illegible]

[illegible]

[illegible] contra [illegible] quia ex [illegible]

gauerit. ¶ Ex [illegible] clam eſſe, per fundam [illegible] ſtitui quam natura [illegible] & æqui [illegible] integ [illegible] m & radictatus ſubl [illegible] di cetentu: ¶ Veni nunc ad [illegible] intentio domini actoris: in q [illegible] fronte dicendum, quod non [illegible] nat at ſe dediſſe & te [illegible] no, al at quod ſit et ſolutio [illegible] teſt [illegible] deponat de tali pacto al [illegible] [illegible] cauſa [illegible] quod ubi [illegible] p [illegible] probet de alm [illegible]

[illegible] ff. de pactis [illegible] & [illegible] *ff. de eden.* Alex. *in con. 121* [illegible] *probans, lib. 1. & in conſ. 56 in prin lib. 2.* Alia [illegible] ad du- cunt aduoca [illegible] aduerſæ, de qui [illegible] ¶ [illegible] bus tamen [illegible] obſtantibus, putu intentionem actor [illegible] meeſſe iuſtificatam & [illegible] pro eo d [illegible] & concludeter, duo teſte conteſtes dep [illegible] debitoris principalis, videlicet Vincentius [illegible] & Bapt [illegible] Pe [illegible], qui animo deputunt, quod præſentati [illegible] ipſi [illegible] bitores [illegible] actoris [illegible] actor, quod [illegible] [illegible] periculo quod illud [illegible] ſet, & [illegible] actor [illegible] ne al [illegible] diſponere [illegible] quæ conteſti [illegible] facta [illegible] [illegible] tam dicto [illegible] nato, pe [illegible]

[illegible]

quando maritus recognoſcit ſe h[illegible] abuxo[illegible] mid[illegible] partem bonorum ſuorum, ex cauſa dotis, talis recognitio habet vim traditionis, quia primo cenſetur maritus bona vxori tradidiſſe, & ab ea breui manu recepiſſe, & ſic continuatur donatio morte mariti. ¶ Secundo reſpondeo, quod hic apparet de vera traditione grani, ex confeſſione ipſius debitoris, qui confeſſus eſt, ipſum actorem granum illud ſibi remiſiſſe, & ſe aliud acceptaſſe, qua confeſſione traditio probatur. Bar. *in l. Papinianus. ff. de donat. inter vir. & vx.* [illegible] *ubi Iaſ. in apoſtil.* ¶ Non obſtat quod non videatur conſtare de aliqua menſuratione illius grani, quia dico, [illegible] probatur menſura per confeſſionem ipſius debitoris, qui confeſſus eſt, ſe acceptaſſe ſuo onere ſaccos grani quingentos, vt deponit dom. Epiſcopus Eneniis, & de quantitate grani deponunt teſtes alii plures. ¶ Secundo reſpondeo, quod aut opponitur de menſura ex eo, quod ante menſurationem granum non dicitur traditum, nec contractus perfectus. *iuxta l. quod ſæpe. §. in his. ff. de contrah. empt. l.* [illegible] *venditione. §. 1. ff. de per. & comm. rei vend.* & non obſtat oppoſitio, quia apparet ex confeſſione partis, quod contractus fuit perfectus, & quod ipſe d. gubernator d[illegible] illum habuit pro perfecto, & pariter grani traditione[illegible] confeſſus eſt. Aut opponitur de menſura, quia ante menſurationem periculum ſit venditoris *d. l. ſi in venditione.* & non obſtat oppoſitio, quia pars granum acceptauit, periculo ſuo ſimpliciter & indiſtincte. Præterea, non docetur hic de aliqua perditione grani. Aut opponitur de menſura ex eo, quod aliquid defuerit aut deſit de quantitate ſaccorum quingentorum, & de hoc ſimiliter nõ docetur[illegible] ſed de menſura ſolum opponunt ad effectum demonſtrandi, quod granum nunquam fuerit traditum, quia non apparet de eius menſuratione, ſed (vt dictum eſt) de traditione probatum eſt legitime. & ſi velit pars dicere granum non fuiſſe traditum, non tenetur probare negatiuam, cum lapſum ſit tempus opponendi exceptionem rei non traditæ, iuxta no. per glo. & D[illegible] ct. [illegible] *in contractibus in prin. C. de non num. pec.* Iaſ. *col. 3. §. verari. col. 2. in fin. ver. dicunt tamen. & in rep. l. admonendi. col. 123. verſ. tu diligentius aduerte. & in l. manifeſtæ. col. 4. in fin. ver. hinc ſumpta occaſione. ff. de iureiur.* Amplius dico, quod non audiretur pars opponens exceptionem grani non traditi, cum ſæpius fecerit confeſſa illud ſibi remiſſum eſſe, & ſe illud acceptaſſe ad eius onus. vbi enim
18 confeſſio eſt geminata, † ceſſat exceptio rei non traditæ, vt habetur *in l. cum ſ. idem. C. de non num. pec.* Feli. *in c. ſi cautio. de fide inſtrum.* ¶ Non obſtat quod teſtes omnes videantur deponere, ipſum reum principalem confeſſum eſſe granum acceptaſſe ſuo onere, titulo venditionis, ſed quod venditio non videtur probata, non conſtito de precio ipſius venditionis. *§. precium. inſtit. de emp. & vend.* Alexand. *in d. l. quod ſæpe §. 1. ff. de contrah. empt. in addi. ad Bart. in conſ. 18. col. 1. lib. 1. in conſ. 18 col. 1. ver. & ad hoc etiam facit lib. 2.* Decius *in conſ. 57. col. 1. in fin. verſ. & ad hoc facit.* Ad iſtud reſpondeo, quod
19 precio † non probato, infertur nullitas aut inualiditas contractus venditionis, quia ſine precio venditio conſtare aut valere non poteſt, & ob id cogi non poſſet debitor ad ſolutionem precii: ſed tamen non infertur, quin ſaltem teneatur ad reſtitutionem grani, quod dixit ſe acceptaſſe periculo ſui. & illud ſibi remiſſum fuiſſe per actorem, eſſet enim iniquum, quod ſi res mea ſit apud te ſine cauſa non tenearis ad eius reſtitutionem, ne alias fias locupletior cum iactura mea. hinc enim militat æquitas illa non tam naturalis, quã diuina, de qua *in l. ſi & me & Titium. ff. ſi cert. pet.* videmus enim, quod vbi contractus annullatur, puta, quia forma aut ſolennitas iuris non fuerit ſeruata in re forte eccleſiæ vel minoris, emptori tamen qui precium ſoluit, illud reſtitui debet, ſaltem ab ipſo prælato, qui minus ſolenniter cõtraxit, licet Eccleſia ipſa non teneatur, niſi quatenus in eius vtilitatem conuerſa ſit, vt habetur *in l. iubemus. 2. §. ſane. Cod. de ſacroſ. eccl. ſ.* Alexand. *in conſ. 4. colum. 1. in fin. lib. 5.* Feli. late *in c. cum cauſa de re iud.* vbi amplius, quod tenetur venditor ad reſtitutionem precii, licet emptor fuerit in mala fide, non fauore emptoris, ſed odio alienantis: in alio autem non priuilegiato, nulla videtur dubitatio, quin teneatur ad reſtitutionem eius, quod accepit ex contractu, quem petit annullari. Videmus etiam, quod vbi reſcinditur contractus remedio reſtitut. in integ. reſtitui omnia debent, quæ quis percepit ex contractu. *l. quod ſi minor. §. reſtitutio. l. intra vtile. ff. de min. l. cum reſcindum. C. de pactis inter empt. & vend. l. 2. C. de reſcind. vend.* & maxime hoc obtinet, quia reus principalis habitis [illegible] lectis literis, meſſitatis ipſius actoris, ab illo Vincentio Iunani nuncio expreſſe deſtinato, dixit, quod caueret agens, vt ne duplicem contractum de grano illo haberet, & quod illud dimitteret periculo ipſius debitoris, & quod ſi[illegible] perditum eſſet, [illegible] periret. Quibus verbis ceſſantibus, actor ipſe granum illud conductum curaſſet ad locum Murex, vt apparet [illegible] teſtimonio illuſtriſſ. Marchionis. An non iniquum eſſet, quod me prohibeas, vt de grano diſponam, tanquam a[illegible] empt[illegible], & quod non tenearis vel ad grani aut ad precii reſtitutionem ſeu ſolutionem[illegible] Aliter etiam reſpondeo ad argumentum, quod licet agens non probauerit de certo precio, ſuper eo tamen aut ſuper æſtimatione, & valore grani poteſt & debet iudex ſe informare, ex officio. Bart[illegible] *in l. ſi quid ex Pamphila. ff. de leg. 2.* Alex. *in l. 4. § hoc autem iudicium colum. 5. ver. item ſupplet iudex æſtimando. ff. de dam. inf. l.* ¶ Non obſtat quod actor egerit ex vna cauſa, id eſt, pacto illo alternatiuo de reſtituendo granum, vel ſoluendo precium, & quod tale pactum alternatiuum non probauerit, ſed ſimpliciter probauerit venditionem *ſeu* acceptationem grani, & titulo venditionis ſine alia [illegible] quia reſpondeo duobus modis: primo, quod l[illegible] bata cauſa diuerſa, imo eadem, nam ſ[illegible] propoſ[illegible] nd tionis lapſo menſe Aprilis anni 1539 quia reu[illegible] ſti tuere granum, intra illum menſem, [illegible] u autem lap[illegible] ur precium eius ſoluere, & ſic propoſita fuit ven[illegible] nalis grani, ſi non illud reſtitutum eſſet pe[illegible] pelis, actor autem ſimpliciter probauit [illegible] ndit[illegible] nem [illegible] conditione, & ſine declaratione precii, & [illegible] quam deduxerit, nihil tamen diuerſum probauit [illegible] peteret ducentum, & ſolum probaret de cent[illegible] in te debet in centum, quia non probatur diue[illegible] ſta in terminis declarat & reſpondet Ang. *in conſ.* [illegible] *ſ. libello.* ¶ Secundo reſpondeo, quod illa regula iuris, q[illegible] d agens ex vna cauſa ſuccumbit, ſi probet de alia, non procedit, quando procedit ſola facti veritate inſpecta, prout hic ex forma [illegible] pri Marchionalis. Alexand. *in l. ſi ita ſtipulatus. §. Griſogon. ff. de v[illegible]* *& in conſ. 114. col. 2. verſ. præterea ſi omnia in cauſa. lib. 6.* Socin. *in* [illegible] *146. col. 6. poſt med. ver. ſed quid plura lib.* [illegible] *& in conſ. 160. col. pen. in fin. ver. 4. & vlt. hoc idem probo lib 2.* Dec. *in c. dilecti filii col. 3. de iud.* Satis eſt igitur in veritate & æquitate probatum eſſe, quod agens granum remiſerit reo, & quod reus illud periculo ſuo acceptauerit, nec voluerit agentem, de illo amplius poſſe diſponere. ¶ Ex præmiſſis, puto, actoris cauſam abunde & legitime eſſe iuſtificatam, quatenus ex actis colligere licet. Reliqua quæ ad conſcientiam pertinent, partium iudicio relinquemus. & ita de iure reſcribendum putaui ſecundum ea, quæ proponuntur, ſaluo ſaniori iudicio. Sauiliani 14. Nouemb. 1545 ¶ Poſtea ſcripta pars aduerſa produxit vnum ſtatutum ciuitatis Saluciarum, per quod prohibetur fideiuſſori renunciare beneficio de fideiuſſoribus, & quod non obſtante tali renunciatione conueniri prius debeat principalis. & ſuper hoc (vt audio) fit maximum fundamentum, ſed ad iſtud ſtatutum reſpondeo clariſſime, duobus modis: primo, quod non habet locum in renunciatione iurata, prout hic, nam videmus, quod lex Iulia prohibet alienationem fundi dotalis, *toto tit. ff. & C. de fundo do. inſt. quibus alie. lic. vel non.* & tamen valet alienatio, ſi fiat cum iuramento. *c. cum contingat. de iureiur. c. 1. eod. tit. lib. 6.* ſimiliter mulier prohibetur pro alio intercedere aut fideiubere, & tamen valet fideiuſſio cum iuramento. *c. ex reſcripto. de iureiu.* ¶ Idem in minore, qui prohibetur alienare immobilia ſine certis ſolennitatibus, *toto tit. ff. de rebus eorum. maxime in l. magis puto. § non paſſim ff. de reb. eor. & tot. tit. C. de præd. min.* & tamen non valet alienatio cum iuramento, ſine illis ſolennitatibus. *auth. ſacramenta puberum. C. ſi aduer. vend.* & † Similiter de contentis in teſtamento tranſactio fieri non poteſt, niſi 20
viſis verbis teſtamenti. *l. de his. ff. de tranſact.* & tamen iſtud non procedit in tranſactione iurata, vt ibi per Iaſ. *colum. pen.* tradit Alex. *in l. ſi conſtante. §. quoties. ff. ſol. matr.* Corn. *in conſ. 140. colum. pen. poſt med. lib. 2.* ¶ Amplius prohibitio legis aut ſtatuti non extenditur ad actum iuratum, licet fiat prohibitio in odium prohibiti, vt probatur *in c. ſignificante. de pign.* tradit Alexand. *in d. l. ſi conſtante. §. quoties. colum. 3.* Socin. *in conſ.* [illegible] *7. col. 7. lib. 1.* quanto magis idem erit vbi tendet prohibitio in fauorem prohibiti, prout hic, cui fauori licitum eſt vnicuique renunciare. *l. pen. Cod. de pact. cum ſim.* ¶ Tertius reſpondendo [illegible] eo, quod ſi ſtatutum Saluciarum expreſſe prohiberet talem renunciationem etiam iuratam, adhuc non valeret ſtatutum, & eo non obſtante, teneret renunciatio iurata, quia non poteſt ſtatutum laicorum tollere aut reprobare vires iuramenti. Bar. *in l. omnes populi in 3. q. prin. col. 8. in fin. verſ. ecce alia. ff. de iuſt. & iure.* Imo *in d. c. cum contingat. in 3. membro. de iureiur.*

non producat, cum talis probatio grauaminis [illegible] imperfecta, & [illegible] quomodo poterit iudex appellationis [illegible] grauatus fuerit appellans, nō visis actis, [illegible] per quib. [illegible] ne [illegible] motiuum Anti[illegible] quod viderit probatum grauamen [illegible] sententia, cum non præsumatur prior iudice, respectu [illegible] ctorum & processus, quia [illegible] procedit, quando victor qui obtinuit [illegible] sententiam, fun[illegible] se super ea, agendo contra condemnatum, [illegible] natus opponere contra sententiam de [illegible] aut nullitate nisi victor illam iustificet p acta, [illegible] appe[illegible] & vult eam rescindi facere tan[illegible] m, qui non potest rescindi tanquam iniqua, ni[illegible]

6 [illegible] aret ex actis. ¶ His ita præmissis. * quod [illegible] m fac[illegible] de grauamine, dico quod non [illegible] me de ipso grauamine, nam sent[illegible] qua [illegible] per ordinamen[illegible] pend[illegible] to, [illegible] non satis erat fidem facere [illegible] senten[illegible] esset & [illegible] ordinamentum [illegible] namentum [illegible] pars [illegible] tenus disponit sent [illegible] relato contin[illegible] *in testam.* [illegible] *rubr. & consilio col. fin.* [illegible] *informatus* [illegible] *lectura.* [illegible] amentum [illegible] sententia [illegible] paret, impossi[illegible] apparere [illegible] quia [illegible] quendo non grauat, sed ipsum ordin[illegible] exequendum esse pronunciatur. Pro [illegible] adduco Rom. *in consi. 106. Quo* [illegible] *in vit.* [illegible] sufficit producere scripturam, quæ ad aliā [illegible] etiam producatur scriptura [illegible] a, quia [illegible] nihil probat, sed [illegible] *Ant. in cons. 68 ad* [illegible] tamsi testes ter [illegible] fides fieri, tunc [illegible] aliquo apparere non [illegible] appellan[illegible] videtur [illegible] habenda [illegible] appellata ab obseruatione [illegible] habentur [illegible]

¶ Circa [illegible] dubium, an recipi debeat petitio [illegible] latæ, in causa appellationis, super possess[illegible]

7 ter, [illegible] non duplicatione. Primo [illegible] appellat[illegible] mutari autem et [illegible] R[illegible] mar[illegible] quem refert & sequitur [illegible] *C. de edendo.* si libellus dat[illegible] tia, emendari aut mutari non potest, in causa appellationis, multo minus dari poterit nouus libellus, cum facti [illegible] fiat, quam de nouo fiat. Decius [illegible] *consilio.* similiter renouat [illegible] quod faciat [illegible] de nouo [illegible] catur. Alexandrin *in cons. 128 in fin. lib. 6.* ¶ Secunda [illegible] tio, quia iudex appellationis [illegible] habe[illegible] quæ in prima instantia [illegible] Bal. *in* [illegible] *C. de tempor. appel.* sed in p[illegible] non fuit aliquid dictum neque tractatum de [illegible] retinendæ, ergo de eo agi [illegible] potest in causa appell[illegible]. Et p[illegible] duo decis. Neapol. *dec. 155.* [illegible] causa appellationis [illegible] cumulari remedia, quæ in prima [illegible] poterant [illegible] appellata hic vult cumulare, in causa appellationis, remedium retinendæ, quod in prima instantia [illegible] positum non fuerat, ergo, &c. Circa quartum [illegible] munitas Raconixii probauerit [illegible] concludi [illegible] quod [illegible], ex verbi franchisiæ [illegible] munitatio Raconixii super facto gabellæ [illegible] augendo, diminuendo, subtrahendo & in totum tollendo [illegible] prout e[illegible] tam in gabellis impositis, quam imponendis, quæ [illegible] clara, ideo non est [illegible] standum. *l. ille aut ille. §. cum in verbis. ff. de leg. 3. l. continuus. §. cum ita. ff. de verb. oblig.* & dici potest [illegible] franc[illegible] dicitur de casu leg. [illegible] *Cod. de furtis.* & quando [illegible] pot[illegible]

8 [illegible] ¶ Non obstant [illegible]

[illegible] ista [illegible] consensionem [illegible] placuerit [illegible] Nec obst[illegible] operab[illegible] quod [illegible] pune auget ¶ S[illegible] [illegible] *de cond.* [illegible] Ideo [illegible] *de cond. & dem.* Bartolus *in l. qui* [illegible] *flaxer expresse voluit ante impleri ff. de cond. & dem.* [illegible] *Alex. in cons. 119 column.* [illegible] landi [illegible] factum gabellæ [illegible] a principe [illegible] aut aliud quid [illegible] posse principe [illegible] verba [illegible] dictio [illegible] non [illegible] illa verba [illegible] natura [illegible] pendenti, antequam [illegible] *pressis. ff. si cert. pet.* [illegible] fuit al quo modo [illegible] in principio [illegible] dictione [illegible] *integer restitutionem eſt neceſſ.* Bart. *in l.* [illegible] *quis fundum column. antepenult. ff. de fund.* [illegible] quod legat intellectum [illegible] Bal. *in l.* [illegible] *ff. de leg.* [illegible] proui[illegible] illuminatr[illegible] Bar[illegible] *in l. edita column. C. de eden.* [illegible] pis, concedere [illegible] imitetur illa dictio [illegible] tum, est [illegible] quod liberum [illegible] Raconixii auge[illegible] ad libe[illegible] voluntatem [illegible] eius, [illegible] rum gabel[illegible] ex quibus appareret [illegible] verbo[illegible] princeps [illegible] concessam in aliquo [illegible] nec cogere [illegible] nt ad petendum [illegible] eius, quod [illegible] tum, circa factam [illegible] gabellæ, sed [illegible] principis sonat quod [illegible] in gabellæ [illegible] fiuum, voluit princeps [illegible] limitare, & [illegible] tari, & gabellam taxare, in quantum [illegible] nt. ¶ Tertio, quod iste [illegible] verborum, quod intentio principis fuerit [illegible] gabellam moderari [illegible] nec eius impositionem suspendere, probatur [illegible] concessa sit potestas augendi & minuendi, per verba [illegible] tanta arbitrium boni viri, [illegible] videbitur, quæ verba [illegible] gnificant arbitrium boni viri. Oldrad. *in consi. 313. circa primum secundo dub.* Bart. *in l. creditor.* [illegible] *ff. mand. & in l. fisc. in prin. de leg. 2.* [illegible] verbis [illegible] debitur, id est [illegible] 10 buerit, secundum [illegible] Oldradum *in dicto consilio 313.* & hæc [illegible] quod [illegible] videbitur, quod si, &c. stare debent [illegible] & testificiue [illegible] princeps potest gabellam moderari [illegible] nopolio [illegible] excessiue, non ex arbitrio [illegible] præcedentia [illegible] declarantur. *l. si servum plurium* [illegible] *ff. de leg. 1. l. penult. Cod. de* [illegible] nolu[illegible] princeps impo[illegible] amp[illegible] [illegible] princeps [illegible] talis impositione [illegible] sed [illegible] princeps fuit [illegible] aliquam [illegible] excep[illegible] liberum esse exceptum [illegible] ita [illegible] *semper in stipulat.* [illegible] *ff. de* [illegible] n[illegible] obst[illegible]

[illegible] ne [illegible] ex [illegible] neceſſaria de [illegible] ex [illegible] effectum [illegible] confirmatione [illegible] enim & inutile æqui [illegible]. *l. quotiens. ff. qui ſatiſ.* [illegible] *§. penultim. ff. quod* [illegible] *anter. §. qui re-* [illegible] *Paulus ff. de* [illegible] *cap.* [illegible] *de preben. ca. 2. de* [illegible] *Laſ. in l. inen latam. ff. de officio* [illegible] *colum. 12.* [illegible] *omn. ind. & ml. §.* [illegible] *de verb.* [illegible] tione [illegible] franch [illegible] gabellarum [illegible] intelli- [illegible] tual [illegible] *ff.* [illegible] Ne [illegible] *C. commun.* [illegible] ob [illegible] pone [illegible] [illegible] pane au- [illegible] ert, & non [illegible] [illegible] ido- [illegible] *ſic* [illegible] *de feud.* Alexand. *in conſ.* [illegible] *6* [illegible] *18. colum.* [illegible] *poſt n.* [illegible] *& illa clauſula non* [illegible] ¶ Secundo reſpondeo, quod [illegible] de [illegible] n- [illegible] imponendæ [illegible] ¶ Tertio, quod [illegible] pre-

12 tatio eſt contra naturam beneficij principis, quod [illegible] eſt interpretandum. *l.* [illegible] *ff. de* [illegible] an- [illegible] monetn illud [illegible] contra [illegible] principis con [illegible] ¶ [illegible] con- [illegible] gabellam, facta fuit pro commu- [illegible] in verbo [illegible] introducta per communi vtilitate [illegible] bene intelligi, interest [illegible] vt not. *in l. Romanis populi* [illegible] *& vbi* [illegible] *in conſ. 45. colum. 2. circa medium.* Itaque [illegible] verba videlicet, quod ſi, &c. intelligi debent, vt minus [illegible] conceſſionem, quam ſit poſſibile. ¶ Quinto dico, quod ista conceſſio principis [illegible] ligi debet, ne con- [illegible] impoſſibilitatem *l. impoſſibilium ff. de regul. iur. capitul.* [illegible] *de reſcript.* Sed concedere facultatem imponendi & augendi gabellam, ita quod eius confirmatio a principe obtineatur, [illegible] concedere rem impoſſibilem, cum impoſſibile [illegible] quod [illegible] principis arbitrio dependet. *l. quod* [illegible] *§. voluntas* [illegible] Doct. Imo [illegible] ſunt, non [illegible] habere [illegible] libere quidem, ſed cum magna difficultate. *l. naturalem ff.* [illegible] *rerum dom. §. 1.* [illegible] Et [illegible] nihil [illegible] talem facultatem obtinere, ſi principis confirmatio [illegible] ¶ Sexto dicere, quod [illegible] imponendi [illegible] gabellam, ſit pura, & fieri id poſſit, ſine [illegible] principis [illegible] conditionalis, reſpectu confirmationis, [illegible] obtineatur, nihil aliud eſt, quam [illegible] & eundem actum diuerſificare, *contra regul. l. cum, qui ædes. ff. de vſucap.* vbi vnus & idem actus diuerſo iure cenſeri non debet [illegible] etiam eſt [illegible] *ff. de cond. & demonſt. c. cum in* [illegible] *de electio.* Et abſurdum videretur, quod [illegible] pro parte ſit purus & pro parte conditionalis [illegible] non poteſt quis, pro parte eſſe liber, & pro parte ſeruus. *l.* [illegible] *ff. de lib.* [illegible] *§. 1. Cod. de lati. liber. toll.* Sicut etiam non poteſt quis, pro parte, eſſe legitimus, & pro

13 parte, illegitimus. *gl.* [illegible] *de* [illegible] *deſpon.* ſic † etiam non poteſt quis, pro parte, eſſe illuſtratus & [illegible] parte, emancipatus. Soc. *in l.* [illegible] *in plus,* [illegible] *ff. ad Trebel.* ¶ Septimo pro reſponſione dico & conſidero, quod [illegible] verba, videlicet, quod ſi, & prout, & in quantum, nobis tanquam ſuperiori domino, & ſucceſſoribus noſtris, in eodem videbitur & placoerit, & non aliter, idē [illegible] ſignificare, quod [illegible] verba ad beneplacitum noſtrū, quæ tamen verba ad beneplacitum conditionem non important, ita quod diſpoſitio ſtat [illegible] pura, licet aliter voluntas diſponentis non declaretur, licet reſoluatur diſpoſitio voluntate [illegible] ante, adeo quando iudex ponit aliquem ad confinia, ad eius beneplacitum, ille ſtatim dicatur confinatus, licet aliter nō de- [illegible] dex [illegible] Raph. Imo. Alex. & Mode. *in l. centeſima* [illegible] *ſin. ff. de verb. obl.* Deci. *in con,* [illegible] *08. col. 2. circa med.* & dicit Iaſ. *in d.* [illegible] *col. 6. verſ.* [illegible] quod eſſet abſurdus & contrarius ſenſus, ponere ad confinia de præſenti, ſi voluero de futuro, ſic etiam videtur abſurdus & contrarius ſenſus, do tibi facultatem gabel-

[illegible] & in [illegible] [illegible] & [illegible] [illegible] ¶ Itaque ver- [illegible] videlicet, quod ſi, & [illegible] vel ad diſcretionem [illegible] d [illegible] habeat locum [illegible] [illegible] ¶ [illegible] [illegible] de [illegible] *l. quia aliena* [illegible] [illegible] a. [illegible] *non ſi* [illegible] longi temporis, quæ [illegible] [illegible] *de donationem* [illegible] *Arc.* [illegible] *in conſ. 11. colum.* [illegible] *conſ. 11. col.* [illegible] *in con. 18. col.* [illegible] *Dec. poſt Arc.* [illegible] *col. 2.* [illegible] *& ex* [illegible] *in conſ. 156* [illegible] [illegible] partis appellantis [illegible] vt communitas [illegible] gabellam [illegible] bitum. ¶ [illegible] dubium, an [illegible] debeat examinatio Philippi [illegible] puto, quod non, quia etiam ſi examinatus [illegible] appellantis, eius tamen teſtimonium non poſſet [illegible] teſtimonia, ipſius communitatis, in cuius etiam fauorem dixerunt [illegible] appellantium, ob id admitti non debet teſtimonium [illegible], quod ſi- [illegible] tum ſit omnino irreleuatorium. *l. ad probationem. 1. C. de probatio. c.* [illegible] *contingat. de offic. deleg. cum ſimil.* Ex præmiſſis apparet quod arguendo à ſufficienti partium enumeratione, omnino pronunciandum eſt in fauorem communitatis appellatæ. Primo, quia pars appellans non videtur feciſſe fidem de grauamine ſufficienter, non producto ordinamento relato in ſententia à qua fuit appellatum. Secundo, quia [illegible] de grauamine fides facta eſſet, tamen appellatio eſt deſerta. Tertio vbi appellatio deſerta non eſſet, adhuc in meritis iuſtificata abunde videtur intentio communitatis [illegible] tam per inſtrumentum franchiſiæ quam per eius teſtes, imo & per teſtes appellantium, ideo puto pronunciandum, appellationem eſſe deſertam, & communitatem appellatam abſoluendam, ab obſeruatione iudicii cauſæ, huius appellationis, & cauſam remittendam ad iudicem à quo, pro executione, facienda. ¶ Omitto illum articulum, quod † ab interlocutoria exequendo, non poteſt appellari, ſecundum magis communem opin. vt per Alexand. *in conſ. 95.* [illegible] *lib. 2.* Felin. *in* [illegible] *ad conſultationem. colum. 9. de re iudic.* Decius *in d.* [illegible] *in 4. not.* [illegible] *appellatio* quia de hoc non fuit oppoſitum, parte enim non opponente tenet appellatio, alias de iure prohibita, puta, ſi appelletur à ſententia poſſeſſorii Alex. *in conſ.* [illegible] *colum. pen. lib. 3* Decius *in l. 1. colum. 3.* [illegible] *à fin. C. de bon. poſſeſ. ſecun. tab.* ſimiliter parte non opponente, appellari poteſt ad ſuperiorem, omiſſo medio, *cap. dil.* [illegible] vbi [illegible] *in 3. not. de appellatio.* C [illegible] *in conſ.* [illegible] *de appellatio.* Et ita conſulo ſaluo ſaniori iudicio. Saulliani, die 27. Decemb. 1545 [illegible] die feſtum celebratur [illegible] Ioan. Euangeliſtæ, patroni [illegible] Quem ipſum humiliter obſecro, pro [illegible] preces dignetur [illegible] ad Chriſtum crucifixum ac Trinitatem indiuiduam, Chriſtique matrem Virginem, vt [illegible] cedat. 14

Sequitur tenor ſententiæ.

¶ Quia comperimus [illegible] ipſam Inſtantiam appellationis, ideo pronunciamus appellationem deſertam, cauſam remittētes iudici [illegible] quo. Communitatem Raconixii appellatam abſoluimus ab obſeruatione iudicii cauſæ, huius appellationis. Expenſis compenſatis, ex [illegible] animos mouentibus. Nullas alias eſſe partes [illegible] quis [illegible] tempo declarantes, ſaluo ſiue appellantibus ſibi prouidendi, prout [illegible] ſi ſua intereſſe putauerint [illegible] in triplici [illegible] pœnas deſertioni, tanquam præiudicias. [illegible] compenſatæ expen-

pen-

[illegible] ocat nam talis probatio grauam[illegible] per e[illegible] ſententia [illegible] nodo pote[illegible] ex app[illegible] appe[illegible], nõ vltus actis [illegible] caſu, [illegible] quod videtur probatum grauame[illegible] ſententia, cum non præſumatur [illegible], reſpectu a[illegible] & proceſſus, qu[illegible] aliud procedit, quando victor qui ob[illegible] tentiam, fun[illegible] ſuper ea, agendo contra conde[illegible] poſſet [illegible] opponere contra ſenten[illegible] victor illam ſuſficer pacta, [illegible] & vult eam retinendi facere tan[illegible] poteſt re[illegible] tanquam iniqua, ni[illegible]

6 [illegible] rei exacta. ¶ His ita præmiſſis, † quod [illegible] de grauamine, dico quod non [illegible] de ipſo grauamine, nam ſent[illegible] ſuper ordinamento prod[illegible] to, [illegible] non ſatis erat fidem [illegible] eſſet & illud ordinamentum relatū [illegible] ordinamentum relatum, dici[illegible] pars [illegible] eatenus diſponit ſententia[illegible] relato cont[illegible] netur. [illegible] *rubr. de conſtit. vol. fin. verſ.* [illegible] *lectura.* [illegible] ordinamentum [illegible] latum in ſententia [illegible] impoſſibile eſt apparere de aliquo gr[illegible], quia [illegible] exequend[illegible] non grauat, ſed ipſum [illegible] ordinamentum quod exequendum eſſe pronunciatur. Pro [illegible] Rom. *in conſ.* 105 *Qui ad ſuperiorem in vlt.* [illegible] non ſufficit producere ſcripturam, quæ ad aliũ [illegible] niſi etiam producatur ſcriptura rel[illegible], quia [illegible] ſcriptura referens nihil probat, ſed [illegible] Aret. *in conſ.* 68 [illegible] ſententiam ſe referentem [illegible] nis fides fit, ſine [illegible] aliquo apparere [illegible] ¶ [illegible] appellans non videtur [illegible] habenda [illegible] appellata [illegible] *in l. ad morandi* [illegible] ¶ Circa [illegible] an recipi debeat petitio [illegible] [illegible] appellationis, ſuper poſſeſſione [illegible] ſupplicatione. Pri[illegible]

7 [illegible] emendari non [illegible] Ro[illegible] conſ. 181 quem refert & ſequitur [illegible] *in l. ad* [illegible] *C. de edendo.* ſi libellus datus [illegible] emendari aut mutari non poteſt, in cauſa appellationis, [illegible] datus poterit nouus libellus, cum [illegible] fiatur, quam de nouo fiat. Dec. [illegible] *conſtit.* ſimul ter renouat [illegible] Alexandr. *in conſ.* 128. *in fin. lib.* 6. ¶ Secundo [illegible] quia iudex appellationis ſolum habet [illegible] *C. de tempor. appel.* ſed [illegible] poteſt in cauſa appellationis. Et pro [illegible] deci. Neapol. [illegible] cumulari remedia, qua[illegible] inſtan[illegible] Sed par appellans [illegible] ap[illegible] pellationis, remedium retinendæ, quod in prima inſtanti [illegible] poſitum non fuerat, ergo, &c. Circa quartum dubium [illegible] munitas Raconiſii probauerint [illegible] breuiter puto concludendum, quod ſic, ex verbis franchiſiæ [illegible] munitati Raconiſii ſuper facto gabellæ eam au[illegible] nuendo, ſubtrahendo & in totum tollendo, prout [illegible] tam in gabella impoſita, quam imponend[illegible] quæ verba [illegible] clara, ide[illegible] non eſt dubitandum. *l. ille aut ille.* [illegible] *l. cum in verbis* [illegible] ſ. 1. [illegible] text. [illegible] *Cod. de furtis.* & quando [illegible] Old. [illegible]

8 [illegible]

q[illegible] iſta ve[illegible] ionem ſi domino placue[illegible] prius [illegible] N[illegible] quo[illegible] mo[illegible] impu[illegible] d tamen [illegible] ere commun[illegible] ſub hac claus[illegible] pune augeri. ¶ Sed [illegible] interpre[illegible] tio nul[illegible] & m[illegible] franchiſiæ [illegible] conditionem [illegible] præter [illegible] *de cond.* [illegible] *demon. l. celeri dum* [illegible] quando actum [illegible] poſſunt [illegible] *de fideic. manum. liber.* [illegible] *l. quæſitum* [illegible] *de cond. & demon.* Bart. [illegible] *l. quibus dub.* [illegible] *ſtator* [illegible] *voluit ante* [illegible] *ff. de cond. & demon.* Bal. *in con.* [illegible] Alex. *in con.* [illegible] datur po[illegible] amplißima hominibus Raconiſii [illegible] circa factum gabellæ, nec [illegible] igitur, vt [illegible] principe con[illegible] aliud quam antea [illegible] poſſet [illegible] talem poteſtat[illegible] prout ei placuerit, [illegible] verba vid[illegible] ditionem [illegible] nullo modo poſſunt. ¶ Secun[illegible] illa verba conditionem aliquam non imp[illegible] natura † conditionis eſt vt [illegible] pendenti, antequam [illegible] *preſſim* [illegible] *ff. ſi cer. pet.* ſed iſta verba franchiſiæ vid[illegible] quo modo [illegible] in primo [illegible] ſtrictiua, eſt [illegible] *integer reſtit. non eſt neceſſ.* Bart. *in l.* [illegible] *quos fundum* [illegible] *ff. de fundo* [illegible] bi loquitur de [illegible] qui legat ſupellectilem [illegible] tradit [illegible] ſimiliter illa de[illegible] limitatiua [illegible] Bal. *in extr. ad reprimendum.* [illegible] *prout. & in l. edita* [illegible] *C. de edendo* limitatur enim & [illegible] gitur iſta pote[illegible] gabellam, ad beneplacitum prin[illegible] pis, concedentis [illegible] similiter illa dictio [illegible] tum, eſt [illegible] quod libet [illegible] Raconiſii augere gab[illegible] ad liberam voluntatem [illegible] rationem eius, ſed in [illegible] tum principem [illegible] voluit princeps tale [illegible] gabel[illegible] ex quibus apparet ſentium [illegible] verborum eſſe, quod noluit princeps ſuſpendere pote[illegible] conceſſam in aliquem euentum, nec cogere homin[illegible] ad petendum conf[illegible] ionem eius, quod eſſet confi[illegible] tum, circa facium & augmentum gabellæ, ſed verba & men[illegible] principis ſonant quod ſi forte augmentum gabellæ eſſet exce[illegible] ſiuum, voluit princeps illud poſſe [illegible] taxare, in quantum [illegible] Tertio, quod iſte ſit verus [illegible] verborum [illegible] quod intentio principis fuerit, vt poſſet gabellam moderari [illegible] non eius impoſitionem ſuſpendere, probatur, qu[illegible] conceſſam poteſtas augendi & minuendi, per verba im[illegible] arbitrium boni viri, prout eis videbitur, quæ ver[illegible] gnificant arbitrium boni viri. Oldrad. *in conſ.* 124. *circa primum* *ſecundo dub.* Bar. *in l. creditor* ſ. *Lucius ff. mand. & in l. ſi ſic* [illegible] *de leg.* 2. exponitur [illegible] verbum [illegible] videbitur, id eſt, vid[illegible] 10 buerit, ſecundum [illegible] *in d. conſilio* 124. [illegible] quod [illegible] verba [illegible] quod ſi, &c. [illegible] ſtare debent [illegible] & reſtrictiue, vt princeps poſſet gabellam moderari [illegible] impoſitam [illegible] præcedentia enim ſequenti [illegible] declarantur *l. ſi* [illegible] *ff. de leg.* 1. [illegible] *Cod. de* [illegible] ¶ Quarto [illegible] noluit princeps impon[illegible] gabell[illegible] in bonis viri, nam [illegible] fuit [illegible] ſed intentio principis [illegible] exceſſiua [illegible] iſta igitur interpretatio [illegible] *ſemper in ſtipulat.* [illegible] ¶ [illegible] 11 illa verba franchiſiæ [illegible] *contr.* [illegible] nec obſtat [illegible] [illegible]

[illegible] deſt [illegible] tamen [illegible] cō [illegible] & [illegible] *quoties. ff. qui* [illegible] *§. penultimo. ff. quod* [illegible] *§. qui* [illegible] *Paulus. ff. de ver. ſig.* [illegible] *de praben. ca. 2. de* [illegible] *Laſ. in l. manlianam. ff. de eſſ.* [illegible] *inl.* [illegible] *marc. column. 12.* [illegible] *colum.* [illegible] *§.* [illegible] *ſimilib.* [illegible] *ff. de verbor.* [illegible] ſtio [illegible] gabe [illegible] deb [illegible] *quod pu* [illegible] *§.* [illegible] *C. commun* [illegible] ¶ Nec ob- [illegible] pe [illegible] ipane, [illegible] [illegible] lo- [illegible] quod pœna [illegible] *§.* [illegible] *fin* [illegible] *de* [illegible] Alexand [illegible] *8* [illegible] *18. column.* [illegible] *l med. ver. nam* [illegible] *column.* [illegible] *poſt m.* [illegible] *& illa clauſula non* [illegible] ¶ [illegible] unde reſpondeo, quod [illegible] tione [illegible] gebatur de pr[illegible] dap[illegible], [illegible] de priuileg[illegible] ga- [illegible] imponend[illegible] gabellæ. ¶ Tertio dico, quod [illegible]

12 tatis ele[illegible] beneficio [illegible] pis qu[illegible] eſt in[illegible] pretandum [illegible] *ff. de conſtitut.* [illegible] au- te[illegible] verba & incu- [illegible] q[illegible] odilla con- ce[illegible] & [illegible] gabel[illegible] pro commo- d[illegible] verba conceſ[illegible] ſum[illegible] communi vtilitate [illegible] *in l. o- mnes popul.* [illegible] *conſ. 43. volum. 2. circa me- dium.* [illegible] quod ſi, &c. intelligi deberent, vt minus [illegible] conceſſionem, quam ſit poſſibile. ¶ Quin- to dico, quod [illegible] ita intelligi debet, ne con- tineat [illegible] impoſſibilitatem *l. impoſſibilium. ff. de regul. iur. ca- pitul. ſi* [illegible] *de reſcript.* Sed concedere facultatem imponendi & augendi gabellam, ita quod eius confirmatio à principe ob- tineatur, [illegible] concedere rem impoſſibilem, cum im- poſ[illegible] quod à principis arbitrio dependet. *l. apud Iulianum §.* [illegible] *lat.* [illegible] vbi lat. Doct. Imo paria ſunt, non po[illegible] habere quidem, ſed cum magna difficul- tate. *l. naturalem ff. de* [illegible] *§. 1. manthen. de fideiuſſor.* Et profecto nihil operatur, talem facultatem obtinere, ſi princi- pis confirmatio [illegible]. ¶ Sexto dicere, quod fa- cultas imponendi [illegible] gabellam, ſit pura, & fieri id poſſit, ſi- [illegible] a principio [illegible] conditionalis, reſpectu confirmatio- nis, [illegible] obtineatur, nihil aliud eſt, quam [illegible] & eundem a[illegible] diuerſificare, *contra regul. l. eum, qui ædes. ff. de vſucap.* vbi vnus & idem actus diuerſo iure cenſeri non de- bet, pro quo etiam est text. *in l. ſi ſine. ff. de cond. & demonſt. c. cum in tua. & c. dudum.* [illegible] *cognouimus. 12. q. 1.* [illegible] *de electio.* Et abſurdum vi- deretur, quod [illegible] actus pro parte ſit purus & pro par- te conditionalis ſicut non poteſt quis, pro parte eſſe liber, & pro parte ſeruus [illegible] *ff. de* [illegible] *§. 1. Cod. de latis libert. tol.* Sicut etiam non poteſt quis, pro parte, eſſe legitimus, & pro

13 parte, illegitimus. *gl. fin. in c. fin. de clandeſt. deſpon.* ſic † etiam non po- teſt quis, pro parte, eſſe filiusfamil. & pro parte, emancipatus. *Soc. in l. 1. § in ſilu. m 3. no. ff. ad Trebel.* ¶ Septimo pro reſponſione dico & conſidero, quod illa verba, videlicet, quod ſi, & prout, & in quantum, nobis tanquam ſuperiori domino, & ſuc- ceſſoribus noſtris, in eodem videbitur & placuerit, & non aliter, idẽ videntur ſignificare, quod illa verba ad beneplacitum noſtrũ, quæ tamen verba ad beneplacitum conditionem non impor- tant, ita quod diſpoſitio ſtatim ſit pura, licet aliter voluntas di- ſponentis non declaretur, licet reſoluatur diſpoſitio voluntate [illegible] ſtante, ideo quando iudex ponit aliquem ad confinia, ad eius beneplacitum ille ſtatim dicitur confinatus, licet aliter non de- [illegible] iudex, ſe id velle. Raph. Imo. Alex. & Mode. *in l. continuus. § fin. ff. de verb. obl.* Deci. *in con. 108. col. 2. circa med.* & dicit Iaſ. *in d. § fi. col. 6. verſ. 2.* ſumma, quod eſſet abſurdus & contrarius ſenſus, pono te ad confinia de præſenti ſi volueris de futuro, ſic etiam videtur abſurdus & contrarius ſenſus, do tibi facultatem gabel-

[illegible] imponendi, & impo[illegible] g[illegible] llendi [illegible] volu[illegible] [illegible] imo plaſque [illegible] intellectu [illegible] in auribus vulgi ¶ itaque veriuſ[illegible] lectu [illegible] bonũ, videlicet, quod ſi, & pro[illegible] & [illegible] quod [illegible] verbis ſeruantur, vel ad durationem [illegible] vel ad [illegible] limit[illegible] moderationem, id [illegible] habeat facultatem [illegible] qu[illegible] tum [illegible] quod poſſit p[illegible] [illegible] modo [illegible] ¶ [illegible] aliqua [illegible] [illegible] periturl *nominibus* [illegible] & pati [illegible] [illegible] dentes. [illegible] ducit. [illegible] *poſſ. ff. de* [illegible] *conſ.* [illegible] *tola.* [illegible] quis [illegible] longi temporis, qua non re[illegible] tur, quod [illegible] obſeruanti[illegible] Paul. de Caſt. *in con. 347.* [illegible] *donationem column. fin. l* [illegible] *1.* Aret. *in conſ. 11. colum.* [illegible] *ver. ſed* [illegible] *abundanti* [illegible] *in conſ. 111. col. fin. ver. ſed certe poſſumus dicere* [illegible] *in con.* [illegible] *col.* [illegible] *4.* Dec. poſt Aret. *in c. cum M. col. 2.* [illegible] *ver. &* [illegible] *inferius de conſtit.* [illegible] *in conſ. 156.* [illegible] *l. ſi* [illegible] mitatis [illegible] inſtantiam [illegible] appellante [illegible] tem- pore [illegible] fuiſſe, vt communitas [illegible] gabellam ad li- bitum. ¶ Circa [illegible] tum dubium [illegible] examinati Philippi [illegible] puto, quod non, quia etiam reexami- natus deponere: pro [illegible] bus, cui tamen te- ſtimonium non poſſet [illegible] fidere tot te[illegible] ipſius communi- tati in cuius etiam fauorem dix[illegible] teſt[illegible] appellantium, ob id admitti non debet teſtimonium [illegible] quo[illegible] tum ſit omnino releuatorium. *l. ad probationem. 1. C. de probatio. & c. cum contingat. de offi. delegat. cum ſimil.* Ex præmiſſis apparet quod arguendo à ſufficienti partium enumeratione, omnino pro- nunciandum eſt in fauorem communitatis appellatæ. Primo, quia pars appellans non videtur feciſſe fidem de grauamine, ſufficienter, non producto ordinamento relato in ſententia à qua fuit appellatum. Secundo, quia vbi de grauamine fides facta eſſet, tamen appellatio eſt deſerta. Tertiò vbi appellatio deſerta non eſſet, adhuc in meritis iuſtificata abunde videtur intentio communitatis, tam per inſtrumentum franchiſiæ quam per eius teſtes, imo & per teſtes appellantium, ideo puto pronunciandum, appellationem eſſe deſertam, & communi- tatem appellatam abſoluendam, ab obſeruatione iudicij cau- ſæ, huius appellationis, & cauſam remittendam ad iudicem à quo, pro executione facienda. ¶ Omitto illum articulum, quod † ab interlocutoria exequendo, non poteſt appellari, ſe- 14 cundum magis communem opinionem per Alexand. *in conſ. 95. Viſis proceſſibus. lib. 2.* Felin. *in c. quod ad conſultationem. column. 9. de re iudic.* Decius *in d. c. nouit in 4. not. de appellatio.* quia de hoc non fuit op- poſitum, parte enim non opponente tenet appellatio, alias de iure prohibita, puta, ſi appelletur à ſententia poſſeſſorij. Alex. *in conſ. 2. column. pen. lib. 3.* Decius *in l. 1. colum. 2. circa fin. C. de bon. poſſeſ. ſecun. tab.* ſimiliter parte non opponente, appellari poteſt ad ſu- periorem, omiſſo medio, *ex. d.* [illegible] *131.* vbi Præpoſi. *in 3. not. de ap- pellatio.* Car[illegible] *in conſ.* [illegible] *de appellatio.* & ita conſulo ſaluo ſa- niori iudicio. Saul [illegible] die 27. Decemb. 1545 Qua die feſtum ce- lebratur S. Ioan. Euangeliſtæ, patroni [illegible]. Quem [illegible] ſum h[illegible] obſecro. pro ipſo ne vt preces dignetur offerre ad Chriſtum crucifixum ac Trinitatem indiuiduam, Chriſtique matrem Vir- ginem, ſimul intercedat.

Sequitur tenor ſententiæ.

¶ Qui[illegible] comperimus [illegible] appella[illegible], ideo pronunciamus appellationem [illegible] tam cauſam remittimus iu- dici à quo. Communitatem [illegible] appellatam [illegible] ſoluimus ab obſeruatione iudicij cauſæ, huius appellationis. [illegible] enſis compenſatis, [illegible] nos mouen[illegible] us. N[illegible] las [illegible] te[illegible] ſtras in reli[illegible] requi[illegible] tem[illegible] ga- .... ſaluo [illegible] appella[illegible] bus [illegible] ſi ſua inter[illegible] putaueri[illegible]. In [illegible] caſu [illegible] [illegible] deſertioni, tanquam præiudicial. [illegible] pe[illegible]

[illegible]

S V M M A R I A

1 Mortuo delegante, antequam delegat[illegible] partes [illegible] expirat delegati [illegible]
2 [illegible] quod p[illegible] a delegato mortuo delegante [illegible]
3 [illegible] à quibus recepta ſunt probant [illegible]
[illegible] non faciat fidem inſtrumentum.
[illegible] Archi[illegible] videtur [illegible]
[illegible] plenam fidem, non [illegible] ante omnia [illegible]
[illegible] differentia [illegible] debet quam verba.
[illegible] argumentum à maioritate ra[illegible]
[illegible] quam verba.
[illegible] potius [illegible]
[illegible] tempori [illegible]

CONSILIVM MCCLXXIV.

Pro monaſterio Reuifrigidi contra dominos Canonicos Re[illegible] Marchionatus Salaciarum.

D[illegible] In hac cauſa [illegible] contra d. Canonico Reue[illegible], pro quo [illegible] perreuerendum D. [illegible] in R[illegible]llenſem, & Au[illegible] Reuerendo domino [illegible] Tuſcul[illegible] patru Sa[illegible] [illegible] verum [illegible], quod [illegible] id eſt, [illegible] delegante [illegible] integra, antequam dominus Vi[illegible] partes [illegible], puto, quod expirauerit [illegible] ibi Bart. & Doct. [illegible] quod [illegible] delegatus ignoret mortem delegantis [illegible] & D[illegible] ibi Abb. & Moder. *in c. gratum de off. deleg.* [illegible] partes conſentiunt, quod procedat delegatus mortuo [illegible] ante, re integra, *gl. in c. cum venſſent. in ver.* [illegible] *gratum col.* [illegible] videndum [illegible] morte delegantis, antequam de[illegible] cœpit [illegible] ibi commiſſa, ne [illegible] ¶ Secundo quæritur, an iudex delegatus poſſit pronun[illegible] [illegible] & auth. [illegible] dic [illegible] quæſtio habet duo dubia, primum an talis pronunciatio fieri poſ[illegible] [illegible] delegatum [illegible] an [illegible] inuenta fit [illegible], ut fidem faciat [illegible] primum [illegible] eſſe forma [illegible], quam reperi non potuit [illegible] non puto, in [illegible] quod delegatus facere [illegible] [illegible] videtur, habere effica[illegible] cum ipſi delegato illud tantum com[illegible] inſtrumentorum [illegible] quiſita [illegible] de conſuetudine patriæ [illegible] cauſa [illegible] [illegible], quomodo & qualiter [illegible] habeat, quam iuris, [illegible] [illegible] omnium inſtrumentorum, [illegible] de fide eorum [illegible] delegatus vltra formam mandati [illegible] pro publi[illegible] [illegible] diceret de eſte [illegible] parte [illegible] Bart. *in l.* [illegible] *teſtamento* [illegible] *C. de teſt.* [illegible] pronuncia[illegible] [illegible] notam & pe[illegible] [illegible]

[illegible] Imo [illegible] nus, [illegible] tempore [illegible] N[illegible] de ſubſtantia [illegible] tempore, quan[illegible] tempo[illegible] ¶ Te[illegible] tiquit in tempori [illegible] publico, [illegible] nopinata [illegible], in tali archiuio, [illegible] *probationib. auth. ad hæc. C. de fide inſtrum.* [illegible] & [illegible] ſcriptura archiui [illegible] probare extra territorium in quo archiuium ſit [illegible] non poteſt, qu[illegible] ipſum archiuium multum [illegible] bonum deducere & probare, quod [illegible] eas ſcripturas [illegible] uentæ in archiuio publico, & quod monaſteri[illegible] pore habet illud archiuium, cum [illegible] & ſi poſſit probari conſuet. quod [illegible] ſcript. [illegible] fuit fides, etiam extra terri[illegible] ¶ [illegible] videndum [illegible] facto, ſi contenta in tali inſtrumento [illegible] fuerit ſeruata, & deducere [illegible] talem obſeruantiam, [illegible] dus † ſcripturæ ſuppletur per obſeruantiam ſi[illegible] *& l. veritas. C. de fideicom.* [illegible] *in allegationibus ſuis. inter conſ.* *conſ. 400. Super primo puncto* [illegible] 4. Bal. *in conſ. 402.* [illegible] *per ſolam diſſimulationem in fin. lib.* 5. R[illegible] *in conſ.* 402. *dubitatur conſ. 16* [illegible] bi[illegible] primi [illegible] ſoleo dicere in quodã tract. meo *& in conſ.* [illegible] dicimus, ambiguitatem ſcripturæ declarari per [illegible] ſubſecutam. *l. minime. & l. ſi de interpretatione. ff. de l.* [illegible] per Rom. *in conſ. 271.* [illegible] *col. 2. verſ. 3. non eſt dub.* [illegible] dit, [illegible] modi [illegible] tempore ita ſit obſeruatum, [illegible] tantia declaratiua no[illegible] ſequitur præſcriptio [illegible] C[illegible] *in conſ.* 347. *Quia circa donationem, col.* [illegible] ibi Dec. *in conſ.* [illegible] *verſ.* [illegible] Dec. *in conſ.* 156. *col. pen.* & a[illegible] ¶ Ex † pr[illegible] dictum inſtrume[illegible] plenam fidem f[illegible] miſſione menti[illegible] Tertio princip[illegible] ter du[illegible] le[illegible] habe[illegible] mo memorato. D[illegible] ad[illegible] videtur de [illegible] [illegible]

Bart. & [illegible] *Longinſtu* C [illegible] ¶ Sed [illegible] n obſtantibus [illegible] obſtant, [illegible] quod imo [illegible] ſit & debe [illegible] dele [illegible] nis prædictæ, quam tamen non vidi niſi per narratt nem [illegible] ut adu [illegible] torum, & pro fundamento conſi [illegible] to, [illegible] and itum dicatur ſtrictiuris & fines eius di

9 ge [illegible] oporteat, [illegible] tamen etiam in mandato, men [illegible] diſpo [illegible] entis inſpici debet, quam verba. ideo ad caſi [illegible] eiuſdem rationis, extendi mandatum debe [illegible] *in § in ff* [illegible] *conſ. 34 col. in lib. 2. & in conſ.* [illegible] *4 col. fin. verſic.* [illegible] *lib.* [illegible] *in conſ.* [illegible] *column. 1. circa med.* [illegible] extendi debet [illegible] [illegible] in quo mandan [illegible] dixi [illegible] [illegible] interrogatus. Pet. de Bellaper. *in l. maritum. C. de procur.* Ant. de Butr. *in* [illegible] *mandato de conſtit. & in cap. nonnullos de præſump.* quod Pet. & Ant. dictum ſequitur Barb. [illegible] *de accuſ.* ſed eſt dubium, quod mens diſponentis & delegantis erat taliter [illegible] proindere parti [illegible] ſpectanti, quod [illegible] inſtrumenta & iura [illegible] ad cauſam, [illegible] ſequi poſſet, vbicunque & apud [illegible] ue perſonas illa eſſent? non enim erat [illegible] modo, [illegible] pud quos eſſent inſtrumenta, ſed quæſtio erat & [illegible] effectu, quod haberet impetrans inſtrumenta intentionem [illegible] iuſtificantia, quo caſu quando agitur de effectu ſufficit [illegible] nq; modo [illegible] illæ ſequatur. *l. ſi mulier. ff. ad Treb. l.* [illegible]

[illegible] *C. de uſu. & ſubſt.* ¶ Secundo † conſidero quod etiam in [illegible] valet argumentum à maioritate rationis. Abb. *in cap. ſi* [illegible] *post R* [illegible] tam per eum alleg. & iſtud ſine dubio [illegible] quando concurrit mens & voluntas deponentis, vt De [illegible] *column. 2. de reſcr.* modo ſi delegatus voluit cogi tertios [illegible] exhibitionem inſtrumentorum, quanto fortius, quod [illegible] authenticari poſſent inſtrumenta, exiſtentia penes [illegible] impetrantem, & pro tanto talis caſus omiſſus fuit, quia [illegible] impetranti tali coactione, non [illegible] opus erat, & habitus fu- [illegible] pro indubitato. ¶ Non obſtant modo allegata [illegible] [illegible] nium, quia licet [illegible] ſatis reſponſum appareat ex præmiſſis, [illegible] tamen reſpondeo & ad primum, quod mandatum eſt [illegible] & fines eius diligenter cuſtodiri oporter, fateor, [illegible] quod in caſu iſto non excedit delegatus fines manda- [illegible] ndo id, quod eſt ſecundum mentem & intentionẽ man- [illegible], quia illud etiam in mandato includitur, cum eſſet in [illegible] ctiſſima inſpici debeat mens & voluntas diſponen- tis, na [illegible] tarum dicitur ſtrictiuris. *l. 1. § fin. qui nanem. ff. de exercito. l. conſt.* [illegible] *ſ. ad* [illegible] *l. patronus. § ſi quis cum eſſet. ff. de bonis lib.* quæ [illegible] citat Oldr. *in conſ. 150. In Eccleſia Valentina. col. 2. poſt med.* tradit Bart. *in l. omnes populi. col. 22. in 4. q. ff. de iuſt. & iure. in l. 1. col. 2. verſ. quæro verum & in l. Labeo. § contra ſcrium. ff. de verbor. ſignif. & nnſimilib.* &

11 tamen † in ſtatutis potius attenditur mens ſtatuentium, quam verba [illegible] *ff. de leg. l. non dubium. C. eod. titul. l. ſcire oportet. §* [illegible] *ff.* [illegible] Bartol. *in l. contra legem. ff. de legib.* ſimiliter reſcripta [illegible] ſtrictiuris Bald. *in l. vxori. C. qui accuſ. non poſſ.* Calc. *in conſil. 18. in princ.* [illegible] ptum interpretatur magis ſtricte, quam [illegible] Dec. *in Rubr. de reſcr. column. 2.* & tamen in reſcriptis magis attenditur mens, quam verba. *gloſ. in cap. ſi propter tua de inta. de reſc. in 6.* [illegible] quam [illegible] not. ad hoc [illegible] Iaſ. *in l. cum ingentium. § prætor. in 6.* [illegible] & [illegible] mandato quod magis inſpiciatur mens mandantis, quam verba tradit Alex. *in d. conſ. 84. col. fin. lib. 7.* ¶ Secundo [illegible] ideo ad arg. quod cum eadem, imo maior ſit ratio in caſu omiſſo, in delegatione, quam expreſſo, non dicitur exten- [illegible] ad [illegible] caſum, imo vna & eadem ratio dicitur comprehendere & decidere omnes caſus, eiuſdem rationis [illegible] ſicut genus comprehendit omnes ſuas ſpecies, & expreſſo vno caſu, veniunt omnes, in quibus viget eadem ratio. Bald. *in l. de quibus. ff. de legib.* quod dictum pro eleganti refert & ſequitur Paul. de Caſtr. *in conſ. 441. pro declaratione. column. pen. in* [illegible] *lib. 1.* & dicit Oldr. *in conſ. 185. Thema tale eſt. Titius canonicum. in fin.* [illegible] quod vbi eſt eadem vel maior ratio, non dicitur lex extendi ſed [illegible] ¶ Alibi ſcribit Cald. *in conſ. 1. in tit. vt lite penden.* quod vbi eſt eadem ratio, non dicitur quis extendendo nouum caſum addere, ſed quod in primo caſu in ratione includebatur, ſecundum æquitatem, detegere ſeu declarare. ¶ Non obſtat, quod [illegible] generali delegatione, non videtur comprehendi perſona [illegible] impetrantis, quia hic non agitur de comprehendendo perſonam mandantis aut ſubdelegantis, quo caſu loquuntur con- [illegible] ¶ Secundo [illegible] ſpondeo, quod contrariũ procedit in odio- [illegible] dubio non cenſetur quis velle ſeipſum ligare aut ſibi præiudicare, ſecus in fauorabilibus, quia tunc comprehenditur

[illegible] ſequentis, in generali diſpoſitione, [illegible] ipſe. *l.* [illegible] *& aqua* [illegible] ibus cenſetur quis [illegible] ipſe, potius [illegible] *conſ. 4* [illegible] *col. 5. verſ. imo potius præſumi debet. lib.* [illegible] eſt notabilis [illegible] &c. [illegible] quia imo in generali diſpoſitione includitur [illegible] ſubiectam materiam. Cyn. *in l.* [illegible] tur Corn. *in conſ. 14. col. 4. verſ.* [illegible] *lib. 3.* [illegible] ſadet, quod [illegible] [illegible] perſona [illegible] nus, quia [illegible] do [illegible] non [illegible] per extractum ſcrip [illegible] dentibus pen [illegible] pen [illegible] &c. [illegible] quæro [illegible] exempl [illegible] orum [illegible] um, d [illegible] ant [illegible] [illegible] lacex [illegible] auerint, aut p [illegible] de [illegible] debet [illegible] 13

[illegible] *fil.* [illegible] *quod not. in* [illegible] *col. 2. lib.* [illegible] An [illegible] de [illegible] *quod in* [illegible] ſubſcriptum [illegible] inſtrument [illegible] exemplaſſent, ſuo [illegible] de imp [illegible] quo caſu neceſſe eſſet de tali imp [illegible] per abſentiam & infirmit [illegible] os, de mandato domini ſubdelegati, qu [illegible] de impedimento, per [illegible], quæ de [illegible] Dec. *in leg.* [illegible] *col. 7. in quarto not. ff. de offic. eius.* [illegible] quod in ſubſcriptione atteſtarentur notarii [illegible] nulla differentia ab ipſis [illegible] bita lectura & collatione, & quod [illegible] cauſante eorum impedimento, & ſubſ [illegible] mand [illegible] domini ſubdelegati. bonum etiam erit, quod [illegible] per notarium actorum, ſeu cauſæ ſecretarium. ¶ Q [illegible] titur, an ſit probandus notariatus eorum, qui inſtrumen [illegible] ſcripſerunt, cum pars negauerit ipſum [illegible] Re- ſpondeo, quod non, quia præſumitur † notariatus pr [illegible] 4 tiquitatem temporis, vltra annos centum [illegible] *verb. ſignif.* Bald. *in auth.* [illegible] *actiones circa fin. C. de ſacroſ. eccl.* [illegible] *comparationes C. de fide inſtrum.* Anch. *in conſil. 21* [illegible] *column. 2.* Al [illegible] *ſil. 101. column. 3. lib. 7.* Soc. *in conſ. 187. colum. 4. verſ.* [illegible] *dec. libr. 3.* Corn. *in conſ. 35. column. 6. in conſ. 271. colum.* [illegible] *conſil. 247. colum. 10. lib. 1.* Dec. *in cap. 1. colum. 6.* [illegible] *verſic.* [illegible] *men ſit. de fide inſtrum. in conſ.* [illegible] *column.* [illegible] *poſt med. in* [illegible] *2. column.* [illegible] *in leg. Barbarius. col. 11. verſic. tertio notabiliter limita. ff. de offic. præto.* Guido Papæ, *quæſt. 357. & in commento ſtatuti ſi quis* [illegible] *verſi. propria manu ſignatas. verſic. ſed an literis antiquis* decis. Neapol *deci. 245. colum. 3. & deciſ. 251. in fin.* Aufret. *in deciſ. Tholoſ. quæſt. 350. in fin.* ¶ Ex præmiſſis abunde (arbitror) videre ſatis [illegible] ctum ad o [illegible] bia, ſub correctione, &c. Saulliani, die 3. Ianuarii 1546. Aymo Crauetta ex Saulliano. I. V. D.

SVMMARIA.

1 *Circa fidem ſcripturæ inſpicitur locus, vbi facta eſt ſcriptura, vbicunque illa producatur.*
2 *Pars poteſt approbare ſcripturam priuatam, vt fidem faciat.*
3 *Actus productionis librorum non attribuitur producenti, ſed petenti & man dantis exhibitionem fieri*
4 *Data & recepta in libro rationum, dicuntur connexa.*
5 *Connexorum idem eſt iudicium.*
6 *Mors addit non paruum fidei ſcripturis mortuorum.*
7 *Mors vim obtinet iuramenti.*
8 *Libri, in quibus continentur veriſimilia, probant.*
9 *Teſtis alias non idoneus creditur, quando deponit veriſimilia.*
10 *Veriſimilitudo poteſt haberi per relationem peritorum, in arte adminiſtrandi & negociandi.*
11 *Ex pluribus præſumptionibus, & indiciis, fit plena probatio.*
12 *Quando probantur duæ famæ contrariæ, ſtatur teſtibus deponentibus de bona fama*
13 *Quoties ſunt alia indicia animi, ceſſant ea, quæ crimen inducunt.*
14 *Inciuile eſt iudicare niſi tota lege perſpecta.*

CONSILIVM CCLXXV.

Pro nobili Ioanne Baptiſta Dada, ciue Mediolanenſi, contra nobilem Paganinum Dada, ciuem etiam Mediolanenſem.

DIVINO ſubſidio ex corde poſtulato. Quæritur in [illegible] cauſa nobilis Ioann. Baptiſtæ Dadæ [illegible] Mediolanenſis, an fides habenda ſit libris rationum, quondam nob. C [illegible] Dadæ, cuius eſt her. pro quota ipſe Ioan. B [illegible] dubio breuiter concludo, quod ſic, ſequ [illegible] ibus ſu [illegible]

[illegible] deiui dicendum, [illegible] quia par, aduerſa petit illos exhiberi [illegible] quod poteſt par [illegible] ſcripturam priuatam, vt [illegible] Bald. in l. de probat. [illegible] legib. & in conſ. 275 [illegible] eſt quidam [illegible] colum. 2. verſ. ad primum lib. 3. Alex. in l. [illegible] lib. 4. Dec. [illegible] colu. 7. [illegible] Felin. in d. c. 2. colum. 3. poſt med. in 5 fallen. [illegible] de fide inſtrum. Iaſ. in rep. l. admonendi. col. 2. [illegible] nunquid autem pariter [illegible] quibus patet hanc eſſe [illegible] opin. contra Innoc. in d. c. cum P. tabellio de fide inſtr. § Hic ita pr[illegible] quod approbari poſſit ſcriptura priuata, dicitur approbata [illegible] libri tutoris ex quo pars aduerſa [illegible] cum exhibitionem. l. ad ſolutionem. C. de re iud. vbi, qui petit term[illegible] ad ſoluendum iudicatum, cenſetur illud approbare, eodem modo, qui petit libros exhiberi, neceſſario cen[illegible] approbare. ſi enim vellet impugnare, non peteret exhiberi. Pro hoc, quod ſcribit Angel. [illegible] & C. quod metus cauſa. vbi, [illegible] petit terminum ad ſoluendum, cenſetur approbare contractum præcedentem. Rurſus non videmus, quod producens ſcripturam priuatam, cenſetur illam approbare Angel. in conſil. 142. Quidam Nicolaus. colum. 2. idem in producente inſtrumentum, minus ſolenne, quod cenſetur [illegible] approbare Bald. in l. ab a. colum. 2. verſ. ſed pone quod [illegible] C. de [illegible] Alex. in conſ. 184. colum. 2. verſ. & poſtea quod etiam alio modo. lib. 7. Felin. in c. cum venerabilis colum. 7. in 2. limitatione. & ibi Decius colum. 16. verſ. [illegible] de except. Iaſ. in conſ. 162. colum. 3. poſt med. lib. ſed eadem ratio approbationis, vid[illegible] in petente, ſcripturam exhiberi, quæ in producente, [illegible] produ[illegible], qui producit

5 quid pet[illegible] & alius produ[illegible] producere, ſed petenti & mandanti exhibitionē [illegible] vram. § ſi decem [illegible] quod cuiuſque [illegible] Bart. in l. [illegible] § [illegible] Falcid. l. ff de leg. 2. vbi ſi conſiliu[illegible] generale dat poteſtatem [illegible] bus, nominandi poteſtatem, videtur poteſta[illegible] natus a conſilio mandante, non à prioribus exequentibus. Pro hoc te[illegible] in cap. literis de reſc. & in c. nonit de appell. cap. mulieres de ſentent. excommun. ideo cum producti [illegible] per partem eam, de præcepto curiæ Parlamenti, & ad petitionem partis, producens dicitur merus executor: & [illegible] productis [illegible] debet petenti, non exequen[illegible] grauaminis [illegible] ſententiæ. & illa eſt ratio, cur [illegible] appellatur, [illegible] executor non [illegible] in conſ. 168. Nam [illegible] colum. 1. [illegible] Aret. [illegible] 4. [illegible] § Et qu[illegible] pro[illegible] [illegible] 185 [illegible]

[illegible]

deſiſtorum [illegible] tentori [illegible] nem patris [illegible] in aliis con[illegible] ratam, [illegible] bene examinata [illegible] colum. 1. in fin. [illegible] pet. [illegible] l. admonendi colum. 48. in limitatione. [illegible] Socin. [illegible] in conſil. 82 colum. 2. in princip. lib. 3. [illegible] ſtante matrimonio, ſi in parte probet [illegible] totum præſumitur [illegible] per gl. ſſ. & D[illegible] de non num. pecun. arguendo ab oppoſitis. Ad idem [illegible] quod [illegible] bit Anchar. in conſ. 436. In hac dubia. colum. 2. poſt med. [illegible] contra præſumendum. vbi arguit ſummam centum librarum [illegible] fuiſſe erogatam prout [illegible] bear, [illegible] quæ etiam erogari debebant [illegible] Ad [illegible] reg. ſemel malus lib. 6. arguendo [illegible] à fortiori, ſi enim ſemel malus, ſemper præſumitur [illegible] eodem genere mali, à fortiori ſemel bonus, ſemper bonus præ[illegible] debeat, in [illegible] genere bonitatis & [illegible] arg. l. merito. ſocio. & licet [illegible] Moder. [illegible] pugnent hoc di[illegible] Caſtr. in d. conſil. 301. tamen [illegible] videtur procedere concurrentibus [illegible] & ita dat [illegible] conjecturarum, [illegible] illud ſecutus ſum in conſil. meo 158 [illegible] conjecturæ confirmantes [illegible] caſu iſto conjecturæ concurrunt non parum multæ [illegible] dem libros [illegible] tam ſupra commemoratæ, [illegible] plicandæ. § Sexto [illegible] fidei iſtorum [illegible] Conſtantini [illegible] hæres & adminiſtrator mortuus eſt, [illegible] fidei [illegible] addit ſcriptura mortuorum. Bart. in l. [illegible] colum. 7. verſ. circa [illegible] & in [illegible] Cyn. format. Cod. de fide inſtrum. & in l. [illegible] Socin. in conſil. [illegible] in conſ. [illegible] colum. 2. [illegible]

[illegible]

ſequitur Dec. *in l. c. in 2. not. Cod. de eden. & cap. 1. colum. 5. circa medium. verſ. eodem modo. de fide inſtrum.* & profectò non eſt veriſimile, quod ille Conſtantius moneus tales libros ſic ſcriptos voluerit dimittere, ſi tale aliquid continerent, cum nemo immemor ſalutis præſumatur. *l. fin. Cod. ad leg. Iul. repet. & literas. de præſum. cap. ſane ſum. 1.*
7 *queſt. 7.* ¶ Septimò, † habenda videtur fides libris memoratis, propter difficultatem probationis cum agatur contra heredes heredum adminiſtratoris, quibus ipſis impoſſibile videtur rationes aliter reddere atq; per tenorem dictorum librorum, attenta multitudine procellarum, conſideratis etiam temporum incommodis & procellis fluctuoſiſſimis tum peſtis, tum belli. Et in libro rationum difficultatem probandi conſiderat Bald. *in l. 1. ante fin. C. de eden. per l. rationes. C. de proba.* Alex. *in conſil. vlt. colum. 3. lib. 7. Iaſ. in repet. d. l. admonendi. colum. 48. verſ. 4. princ. ipaliter.* Hinc videmus, quod ſcriptura priuata in antiquis probat ſemiplene etiam contra tertium propter difficultatem probationis. Specul. *in tit. d. de inſtrum. editio. § nunc dicendum. colum. penult. verſic. regulariter ergo.* ſequitur Anton. de Butr. *in d. cap. 2. colum. 4. verſic. 3. caſum.* & ibi Felin. *colum. 3. in 3. limitatione. de fide inſtrumen.* Socin. *in conſil. 186. colum. 5. in fin. verſ. multum etiam operatur antiquitas. lib. 2.* Dec. *in cap. cum c. ... colum. 2. poſt med. verſic. 2. limitatur. de probatio.* Iaſ. *in repet. dict. l. admonendi. colum. 86. verſic. confirmo veritatem: dictum.* & ibi Ripa *colum. penult.* & idem Iaſ. *in l. non aliquam. colum. fin. C. de iure deliber.* ¶ Octa-
8 uò † probare videntur illi libri, quia dicitur contenta in eis omnia eſſe veriſimilia. *l. ſancimus & auth. ibi poſita C. de iudi.* vbi ſtatur dicto alicuius de expenſis, quando ſunt veriſimiles. quæ nota ad hoc citat Aret. *in conſil. 159. Longa colum. 2. circa med. verſic. intento tamen* Bald. & ita in libro rationum veriſimilitudinem conſiderat Paul. de Caſtr. *in conſil. 114. In cauſa quæ vertitur coram domino ... in 5. dubio lib. 2.* Decius *in conſil. 51. colum. 1. circa med. in conſ. 9. colum. ... poſt med. ... d. l. admonendi colum. 17. verſic. 4. fallit in prima l. ...* ¶ Pro hoc, quod ſcribit Angel. *in conſil. 367. colum. fin. verſic.*
9 *& ſecundum ea, quæ vidi.* vbi, quod † teſti alias non idoneo, creditur, quando deponit veriſimilia, ſimiliter ſtatur aſſertioni iudicis, vbi alias non ſtaretur quando illa eſt veriſimilis. Anchar. *in conſil. ... Ex prædicta facti narratione. columna fin. quod eſt repetitum in conſil. 4... .* Similiter ſtatur confeſſioni alterius, etiam in præiudicium tertii quando illa eſt veriſimilis, puta ſi confitetur maritus ſe emiſſe bona de pecunia vxoris, nam ſtatur tali confeſſioni etiam in præiudicium creditorum, quando eſt veriſimilis, quia vxor bona haberet aliunde. Salic. *in l. ſi mater. C. de contr. emen. empt.* Idem in patre confitente ſe habuiſſe pecunias à filio, nam ſtatur tali confeſſioni, licet alioquin multum ſuſpectæ, quando eſt veriſimilis, quia filius ſit in aliquo exercitio. Angel. *in conſil. 13 ... fundum.* ſequitur Alexand. *in conſil. 18. lib. 3.* Dec. *in conſ. ... 2 verſic. nec obſtat, quod talis confeſſio.* ¶ Similiter ſtatur ſimplici aſſertioni prælati ſuper benemeritis quando vult aliquem remunerare, tanquam benemeritum de eccleſia, ſi talis aſſertio ſit veriſimilis ex coniecturis, vbi alias non ſtaretur Bald. *in l. iubemus. ... in fine princ. Cod. de ſacroſanct. eccleſ.* quem refert & ſequitur Dec. *in cap. quoniam. in colum. 11. in fin. verſic. ſed reſponderi poteſt. de probat.* ¶ Coniecturæ autem plurimæ, ex quibus ſcripta in libris dicantur veriſimilia, hic concurrunt, puta, qualitas perſonæ ipſius adminiſtratoris m... ... nominis non obſcuri, vitæ inculpatæ, qualitas perſonarum, quarum bona adminiſtrata dicuntur, quæ tot expenſas ferre poterant, qualitas perſonæ patris ... qui tot debita pro ſuis negociis contrahere veriſimiliter poterat, præſertim qui non ſolus propriæ ... ita negociaretur, facultates bonorum veriſimiles, conſuetudo loci & familiæ, ex quibus appareat tantum expendi potuiſſe & debuiſſe, adeo quod in aliis perſonis ſimilis conditionis, tantundem ob-
10 ... videmus. Veriſimilitudo † etiam habetur per relationem expertorum aut peritorum in arte negociandi & adminiſtrandi, ... Paul. de Caſtr. *in d. conſil. 114. in 5. dubio. lib. 1.* ¶ Rurſus, ſi in libris continentur aliqua, quæ fieri debebant ſecundum qualitatem perſonarum, & earum facultates, illa dicuntur veriſimilia ... conſonantiam. Bal. *in c. 1. de controu. inueſtit.* Imol. & Doct. *in ... de præ... riptio.* vbi quod teſtes dicuntur deponere veriſimilia, quoniam dicta conſonant diſpoſitioni iuris. ¶ Similiter ſi in libris plene omnia, & in ſpecie narrantur, ex hoc dicuntur continere veriſimilia, ſicut dicitur de teſtibus plene ... narrantibus ... Bal. *in l. teſtium. colum. penult. C. de teſtibus.* Curtius *inter ... de teſtibus. concl. ſo. 19.* Gozad. *in conſil. 13. colum. 11. in fin.* valet enim ... argumentum de teſtibus ad ſcripturas. *l. in exercendis. Cod. de fide inſtrument.* ¶ Ex quibus puto, quod libris memoratis fides haberi debeat, concurrentibus tot rationibus & coniecturis, cum † ex pluribus præſumptionibus & indiciis, fiat ple- 11
na probatio *gloſſ. in leg. 3. § eiuſdem. Dig. ſi. de teſtibus in l. 2. § 1. Dig. ſi. de ex. ... tutor & in l. inſtrumenta. C. de probat.* Roman. *in conſil. ... & conſil. ſequent.* Imol. *in conſil. 136. colum. 1. circa medium.* Calcar. *in conſil. 77. colum. 1. in fin. & ſequent.* Barbat. *in conſil. 50. colum. 6. lib. 3.* ¶ Secundo principaliter quæritur, an probetur dolus tutoris ex eo, quod non deſcripſit in inuentario omnia bona pupillorum contra doctrin. Bart. *in l. tutor qui repertorium. ff. de adminiſtratio. tutor.* Breuiter puto quod non, quia iſte dolus in omittendo, dicitur dolus præſumptus. Alex. *in conſil. 104. colum. 6. lib. 1.* ſed vna præſumptio tollit aliam, & fortior tollit debiliorem. *l. fin. ff. de in integ. reſtit.* modo tollitur præſumptio doli, quia tutor deſcripſit in libris rationum, quæ omiſſa ſunt in inuentario. ergo apparet, quod animum non habuit defraudandi pupillos, & quod bona eorum noluit occultare. & cum duæ concurrant præſumptiones contrariæ, vna doli, in omittendo, altera bonæ fidei in deſcribendo, omiſſa in inuentario, in libris rationum, fortior dicitur præſumptio bonæ fidei tanquam magis ... & naturæ & iuri, ſicut dicimus in teſtibus quia præferuntur illi qui deponunt de bonitate alicuius. ſimul ... Doct. *in cap. ecc... ... terana de elect. & in c. audiuimus de præſcript.* Bald. *in c. noſtras ... prim. de teſtibus.* Abb. *in c. cum penult. col. fin. de cauſ.* Curt. *in conſ. 219. colum. fin. lib. 1.* ſic etiam, † quando probantur duæ famæ contrariæ, ita in teſtibus, deponentibus de bona fama Bald. *in conſil. 166. Proponitur, quod ex quodam inſtrumento. in fin. lib. 2. & in conſil. ... colum. 2. libr. 3.* 12
Card. Zabarel *in cap. cum in tua. in gloſſ. fin. de ſponſ.* Corn. *in conſil. 261 colum. 9. lib. 4.* hinc etiam, quia in duabus literis epiſcopi ... ſtatur illis, ex quibus probatur bona fama. Oldr. *in conſil. 183. colum. 4.* ¶ Et in terminis, quod purgetur iſte dolus præſumptus, per libros rationum, in quibus deſcripta ſunt, quæ dicuntur omiſſa in inuentario adduco Ioann. de Pratis *inter conſilia Calcar. in conſ. 93.* Iacob. de Gloclis etiam *inter conſilia Calcar. in conſ. 9.* vbi volunt quod dolus præſumptus ex eo, quod tutor inuentarium non fecit, purgatur, quando probatur quantitas bonorum pupilli, quæ ad manus tutoris peruenerunt, ſi dolus præſumptus ex totali omiſſione inuentarii purgatur ad modum ſupra dictum, quanto fortius purgabitur de his, qui præſumuntur ex omiſſione particulari. ¶ Secunda præſumptio purgatiua doli arguitur, qui dicitur proceſſiſſe de induſtria, talem omiſſionem, ad commodum pupillorũ, propter eorum creditores, & † quo- 13
ties ſunt alia indicia animi, ceſſant ea, quæ crimen inducunt. Bald. *in conſil. 425. Statuto cauetur, quod nullus. lib. 5.* & nunquam includitur delictum in actu, qui ſine delicto fieri poteſt. Bald. *in l. 1. in quinta oppoſit. in fin. C. de cond. ob cauſ.* Alibi ſcribit idem Bald. *in l. precibus. colum. 7. C. de impub.* quod in delictis ſemper præſumitur pro eo, quod excuſat. quod dictum refert & ſequitur Bal. *in conſil. 167. colum. 4. in fin. lib. 4.* & quæ late ſcribunt Bartol. & Doct. *in l. non ſolum § ſed vt probari. ff. de operis noui nunciat.* ¶ Tertio principaliter dubitatur, an tutor conuentus ad redditionem rationum, poſſit condemnari ad aliquam certam ſummam, in qua appareat debitorem eum eſſe, antequam reddita ſit ratio ad integrum. ¶ Breuiter puto, quod non quia adminiſtrator non tenetur aliquid reddere, niſi prius omnibus liquidatis & acceptis, & ſoluto debito ſuo. Anch. *in conſ. 135. Prima facie. colum. 1. verſic. præterea propono in certum.* Alex. *in conſ. 92. lib. 7.* & maximè illud procedit quando ... actum eſſet, ad redditionem rationũ, tunc enim ſi condemnetur adminiſtrator ad aliquod certum, ante liquidatas rationes, ſententia nõ erit conformis libello in quo ſolum concluditur ad reliquorum præſtationem, redditis rationibus, & ſic ſententia nulla. *l. vt fundus. ff. commun. diuid.* Rurſus talis ſententia continet repugnantia. nam conuentio ad redditionem rationum, intelligitur, quod reputentur data & ſoluta pro pupillo *l. 1. § præterea ff. de contra. act. tut.* quæ reputatio videtur denegari condemnando ad certum quid, quid enim ſi adminiſtrator appareat creditor, rationibus redditis, certe cogeretur repetere, quod retinere poterat, & inueniretur creditor condemnatus ad ſoluendum debitori, quod quid abſurdum. & maximè procedere præmiſſa debent in adminiſtratore neceſſario, cuius officium damnoſum ſibi eſſe non debet *l. ſi quis ex ſignatoribus ff. ... l. poſt l. ... § ad ... l. tutorem. ff. de his quibus vt indig. l. cum quidam. C. de adminiſt. tut.* ſed deberet officium tutelæ ... ſi cogatur tutor quid ſoluere antequam appareat debitorem eum eſſe, non redditis rationibus, nec ſequitur, probatur tale quid perueniſſe ad manus tutoris, ergo continuo damnandus eſt illud vt reſtituat, ſed expectandus eſt exitus redditæ rationis, per quem forte apparebit, non eum te-

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neri vt reſtituat, & contra ſententiam teneri tutorem ad ſolutionem certæ ſummæ, aut reſtitutionem certæ rei, ante redditam rationem, allegari poteſt dictum. *l. inciuile. ff. de legibus.* nam ſi-
14 cut † inciuile eſt, iudicare, niſi lege tota perſpecta, ſic inciuile eſt, tutorem illico condemnare, ante totam redditam rationem, quia finis rationis fortè à proœmio abhorrebit. & ita de iure reſpondeo, ſaluo ſaniori iudicio. Sauiliani, die 29. Decem. 1545. Aymo Crauetta ex Sauiliano I. V. D.

S V M M A R I A.

1 *In antiquis creditur aſſertioni principis, etiam ad eius commodum, & in præiudicium tertij.*
2 *Quæ ſint quæ probent feudum.*
3 *Non valet tranſactio ſuper re clara, ratione ſuſpicionis calumniæ.*
4 *Probatio incerta & dubia non releuat.*
5 *Qui ſoluit debitum ex inſtrumento, non poteſt ignorantiam inſtrumenti allegare.*
6 *Quo modo ratificetur contractus*
7 *Priuilegium poteſt à principe reuocari, de plenitudine poteſtatis, etiam ſine cauſa.*
8 *Generalis ceſſatio ſtatutorum, facta per principem, non trahitur ad ſtatuta iurata.*

CONSILIVM CCLXXV.

Pro illuſtri domino Philippo de Sabaudia domino Raconixii contra homines & vniuerſitatem Caballarii maioris.

DIVINO ſubſidio ex corde poſtulato. Subtilius & copioſius adeo allegatum eſt in [illegible] illuſtriſſ. domini Raconixii, per magnificum iuriſconſultum dominum Ioann. Fran. Nucetum, ex dominis Caballarii leonis, contra vniuerſitatem Caballarii maioris, vt quidem adiungi aliquid poſſe non videatur, ſed ne cauſa tam pulchra, breui nobis curæ dicatur fuiſſe, aliqua & nos in medium proferemus in eandem ſententiam. ¶ Primò poſita videtur cauſa extra omnem controuerſiam, ſi verum ſit quod in facto dicitur probatum, bona caſtri Motironis feudalia eſſe, vt late probatum, tam de iure, quam de conſuetudine. & ad probationem feudi, fuit adductum, quod in regiſtro principis appaiet, iſta bona fuiſſe recognita tanquam feudalia, ex quibus recognitionibus ſine dubio probari dicitur feudum. Zenze. & Imol. *in clem. 1. de iureiur.* Alex *in conſil. 29. colum. penul. lib. 5. Iaſ. in l. 2. colum. 62. quæſt. 16. num. 214. C. de iure emphyt.* Curt. iun. *in conſ. 140.* ¶ Secundo, probari videtur feudum, ſi in inſtrumentis productis parte domini Raconixii, ſint verba enunciatiua principis, aſſerentis ipſa bona eſſe feudalia, quia ſtandum videtur talibus verbis ſaltem, quoad præſumptionem, per quã transferatur onus probandi in aduerſarium, vt per Alex. *in conſil. 15. colum. 2. lib. 5.* ſequitur Iaſ. *in l. ſi prius. colum. 14. in fin. verſic. 2. limit. ff. de oper. nou. nunc. & in conſil. 35. colum. 2. poſt med. lib. 2.* Gozad. *in con-*
1 *ſil. 50. colum. fin. circa med.* ¶ Quod † maximè procedere videtur in antiquis, in quibus creditur aſſertioni principis etiam ad eius commodum & in præiudicium tertii. Socin. *in conſ. 266. colum. 11. verſic. ad ſecundum reſpondetur. lib. 2.* Corn. *in conſ. 312. colum. 5. lib. 1.* nam videmus, quod ſcriptura priuata in antiquis, probat ſemiplene. Spec. *in tit. de inſtrum. edit. § nunc dicendum. colum. penult. verſic. regulariter ergo.* Anton. de Butr. *in cap. 2. colum. 4. verſi. 3. caſus. de fide inſtrum.* Moder. *in l. admonendi. ff. de iureiur.* ergo aſſertio principis, in antiquis plus operari debet, quam ſcriptura vnius priuati hominis. Imo plus valet teſtimonium vnius principis, quam vnius notarii in publico inſtrumento. Andr. de Iſer. *in c. ſane cenſus. in fin. princ. quo tempore miles.* quod dictum refert & ſequitur Iaſ. *in conſil. 66. colum. penult. circa med. lib. 3. & in fin. column.* dicit Iaſon quod verbum regis habetur pro lege, allegat Bald. *in cap. cæterum colum. 6. de iud.* ¶ Tertiò probari videtur feudum per inueſtituras. Oldr. *in conſil. 222. Reuerende Pater colum. 1. circa fin. verſic. præterea feudum acquiritur.* ¶ Quartò probatur feudum ex eo, quod domini Motironis tenuerint bona illa per triginta annos, tanquam feudalia, petendo inueſtituras, & præſtando ſeruitia. *in princ. c. ſi quis per triginta. ſi de feudo fuerit controuerſia inter dominum & agnatum.* Oldr. *in dict. conſil. 272. colum. 1. in princ.* Alex. *in d. conſil. 15. colum. 3. lib. 5.* Imo ſola poſſeſſio, licet non tanti temporis, videtur operari probationem feudi præſumptiue, vt onus probandi contrarium in aduerſarium transferatur. Bald. *in conſil. 350. In bonis feudalibus. colum. 1. libr. 1.*
3 ¶ Quinto † multum confert ad probationem feudi, quod iſta bona ſemper dicuntur poſſeſſa per nobiles & vaſallos, ex eo, quod ſcribunt Iacob. de Butr. & Nicol. de Neapol. *in c. vaſallus. ſi de feudo fuerit controu. inter domin. & agna.* vbi, quod vaſallus qui longo tempore præſtitit ſeruitia, ſi litiget contra dominum, tenetur oſtendere bona, pro quibus ſeruitium præſtitit, alias præſumitur præſtitiſſe pro toto patrimonio *arg. leg. ſideicommiſſum. § 1. ff. de iudic.* ſequitur Curt. iunior *in conſil. 41. colum. 1. poſt medium. in conſil. 140. colum. 2. in fin. & in conſil. 184. colum. 2.* ideo cum conſtet dominus Motironi fuiſſe, & eſſe vaſallos, in dubio præſumendum, quod ſeruitia præſtiterint, etiam pro bonis Motironi. ¶ Sexto, iuuatur non mediocriter probatio feudi, quia dicitur in iuris allegationibus, in bonis Motironi eſſe caſtellum, ſed in hac in patria Pedemontium, caſtella ferè dicuntur feudalia, à communiter accidentibus, valet autem argumentum in materia probationis, & præſumptionis à communiter accidentibus. gloſ. & Doct. *in l. neq; natales. C. de probat. not. in cap. 1. de cler. non reſiden.* Bald. *in conſil. 70. Apparet. colum. 2. lib. 1.* & dicit Bald. *in d. conſ. 350. In bonis feudalibus. in fin. lib. 1.* quod ex frequentia & generalitate præſumitur veritas, niſi probetur conſuetudo difformis. Alibi ſcribit ibid Bald. *in conſil. 390. T. om profunde. colum. 1. in fin. lib. 2.* quod locus à communiter accidentibus, in dubiis cauſis præſumptiue concludit. Alibi ſcribit idem Bald. *in conſil. 151. Ioannes & Fredericus. colum. 1. ante med. lib. 5.* quod præſumptio inducitur ex communi curſu, ſed communis curſus habet, quod caſtra dicantur feudalia. & in pulchro caſu, à communiter accidentibus arguit Abb. *in conſil. 18. colum. 4. in fin verſic. 3. dixi. lib. 2.* Imo procedit iſtud argumentum à communiter accidentibus, etiam quando agitur de crimine ciuiliter. Abb. *conſil. 113. colum. 3. lib. 2.* ¶ Septimò, res etiam videtur clara, ſi probata ſit fama, vt dicitur, quod iſta bona Motironi ſint feudalia, vt per Alexand. *in dict. conſil. 15. lib. 5.* plene dictum eſt per Doct. conſulentẽ, ideo non repetam, & cum agatur de præiudicio & intereſſe principis, tanquam domini directi, communicanda videbatur cauſa Domino procuratori generali, qui & ipſe cauſam ageret domini directi, prout ſemper obſeruatum vidi in patria Delphinatus, quoties tractatur cauſa aliqua, in qua de intereſſe principis agitur. ¶ Sed contra præmiſſa diceret aliquis, præmiſſis argumentis videtur obſtare, quod iſta bona Motironi dicuntur regiſtrata, in quodam antiquo regiſtro vniuerſitatis Caballarii maioris. iuſſus tranſactio habita inter dominos Bennarum, & vniuerſitatem Caballari maioris, per quam domini Bennarũ, & caſtri Motironi ſe obligauerunt ad annuam penſionem, quinque florenorum Sabaudiæ pro oneribus bonorum Motironi, equidem ſi bona verè fuiſſent feudalia, non eſt veriſimile, quod ad eum modum tranſactum fuiſſet. *argum. l. cum de indebito. Digeſt. de probatio.* nec etiam veriſimile eſt, quod ipſi domini Motironi voluiſſent ſe obligare duplici vinculo, pro eiſdem bonis, id eſt, vinculo vaſallagii erga dominium directum, & onere pecuniario annuo erga communitatem Caballarii maioris. ¶ Ad iſtud argumentum reſpondeo multis modis, & primo, quod ſi probatum ſit ad modos memoratos, bona iſta Motironi fuiſſe, & eſſe feudalia, talis tranſactio, ex parte communitatis Caballarii maioris, videtur calumnioſa, & per calumniam extorta, & hac ratione introductum eſt, † non valere tranſactionem, ſuper declaratione ſu- 3
ſpicionis calumniæ. *leg. 1. Digeſt. de tranſactio. l. in ſumma. & l. eleganter. Digeſt. de condit. indebit. l. ſub prætextu. C. de tranſact. cap. 1. & in cap. ſuper eod. extra. de tranſact.* Abb. *in conſil. 85. circa fin lib. 2.* Rom. *in conſ. 516 in 3. dubio.* Et cum tranſactum fuerit pro ſumma quinque florenorum, in ſingulos annos, ſatis modica, præſumendum eſt, quod domini & poſſeſſores Motironi ita tranſegerint gratia redimendæ vexationis, quam redimere licitum eſt, etiam in beneficialibus. *c. niſi eſſent. de præben. c. dilectus filius. de ſimonia. cap. quæſitum. 1. quæſt. 3.* declarando in beneficialibus, vt per Innocent. & Doct. *in c. Matthæus. de ſimonia.* ¶ Secundo reſpondeo ad argumentum illud retorquendo, quod ſi communitas Caballarii maioris vidiſſet aut probare potuiſſet, bona Motironi fuiſſe allodialia elidendo probationes feudi, factas per dominos & poſſeſſores Motironi, non veriſimiliter ad eam tranſactionem deſcendiſſet, pro ſumma tam breui, cum talea vna, etiam mediocris, penſionem illam plurimorum annorum, eſſet exceſſura. *arg. d. l. cum de indebito.* ergo eſt ob id præſumendum, quod ideo ita tranſegerit communitas, quia videret ſe perdituram litem, & quod melius eſſet ſumma illa annua, quam ſi nihil omnino perciperet. Imo & litis diſpendia ſuſtineret *iuxta leg. 1. ff. de minor.* ¶ Tertio reſpondeo, quod ex præmiſſis probationibus qualitatis feudalis & oppoſitionib. factis, per communitatem Caballarii maioris, ſaltem negari non poteſt, quin dubium ſit, an bona Motironi dicantur feudalia, vel allodialia, quæ etiam dubi-

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tas magis declaratur ex tranſactione ſecuta, quæ fit ſuper dubio & incerto, non ſuper claro, vt ſupra dictum eſt, ideo cum res dubia videatur, ſuccumbere debet communitas, tanquam eius
4 probatio dicatur incerta, † probatio autem incerta & dubia non releuat. *l. certum ff. de confeſ. l. duo ſunt Titij. ff. de teſtam. tutel. l. ſincerè. Digeſt. de rebus dubiis l. neque natales l. non nudis l. neque epiſtolis l. ad probationem. 2. Cod. de probatio. ob. ca. in præſentia eod. tit.* Bart. & Doct. *in l. inter ſtipulantem. §. 1. ff. de verb. obligatio.* in re enim dubia iudicium abſolutum eſſe non debet ne veritas offendatur. *l. fin. 33.* & graue ſatis eſt & indecens, vt in re dubia, certa detur ſententia. *cap. graue. 11 quæſt. 3.* ideo reo ſatis eſt, quod actoris intentionem dubiam reddat. *cap. inter dilectos. in fin. de fide instrument. & cap. cum ſint partium. de regulis iuris lib. 6.* Baldus *in conſil. 79. Dubitatis colum. 1. lib. 1.* Anchar. *in conſil. 267. pro parte.* ¶ Quod procedit etiam in materia fauorabili, in qua probatio dubia nihil releuat, puta in cauſa matrimoniali. Alexand. *in conſil. 152. colum. 1. verſic. nec dicatur. libr. 5.* multo minus admitteretur probatio dubia in cauſa talearum odioſa, vt tetigit d. conſulens, & inferius dicetur. ¶ Quod fundamentum iudicio meo videtur efficax & naturale. ¶ Quartò reſpondeo. cum negari non poſſit rem dubiam videri, an feudalia vel allodialia dicantur bona Motironi, in dubio ſumi debet interpretatio, per quam domini & poſſeſſores Motroni minus obligentur, quam ſit poſſibile. *l. quicquid aſtringen. le. ff. de verborum obligat. l. ſemper in ſtipulationibus. & l. ſemper in obſcuris. Dig. de regulis iuris facit text. in leg. tutor qui repertorium. § ex cæteris. ff. de adminiſtrat. tutor.* vbi quando conſuetudo, circa quantitatem vſurarum, vario modo ſe habet, attenditur illa ex qua minores vſuræ debentur, in propoſito illa qualitas bonorum attendi debet, per quam onera breuiora debeantur. ¶ Quintò, dico, quod quoad impediendum deſiderium communitatis Caballarii maioris, idem iudicari debet de caſu dubio, quod de caſu certo. *l. ſi ſiſſi. ut. ff. de con. indeb.* vbi debitum, ſub conditione, ſi ea pendente, ſolutum, repeti poteſt, tanquam indebitum. & ſic in cauſa dubia, an ſit debitum, vel non, fit interpretatio quod non ſit debitum, ad impediendum eius petitionem. Ad idem text. *in l. 1. §. ſi pendeat. ff. ad l. Macedon.* vbi pendente dubio, an filius ſit in poteſtate, vel non, parte exiſtente apud hoſtes, denegatur actio creditori, & obſtat exceptio Macedoniani. Ad idem text. *in leg. pecuniam quam ff. ſi cert. pet.* ſimiliter quod ad impediendum actū, idem operatur pendentia litis, quod ipſa ſententia. *l. Iulianus in ſecundo reſponſ. ff. de condic. indeb.* Imol. *in conſil. 112. colum. 3. in princ.* Ideo cum ſit dubium, an iſta bona dicantur allodialia, vel non, dico, quod iudicari debeat tanquam non allodialia, ad impediendum petitionem talearum. Imo præmiſſa iura decidunt hanc dubitationem, a maiori ratione, nam in dictis iuribus illud dubium poterat euenire, in fauorem agentis, eueniente pro eo conditione, aut lata pro eo ſententia, & tamen impeditur interdum actio. Sed hic euentus ſequi non poteſt, in fauorem communitatis Caballarii maioris, cum fuerit tranſactum. Et ſic in caſu iſto dominus Raconixii nititur duplici iure, primo, quod ſit dubium, an bona ſint allodialia, vel non, in qua dubietate teneri non debet per dicta iura. Secundò, quod fuit tranſactum ſuper tali dubio, ob id, vltra modum tranſactionis teneri aut aſtringi nullo modo debet, quod ipſum fundamentum videtur efficaciſſimum. ¶ Sexto, poſito & non conceſſo, quod bona iſta dicerentur allodialia, adhuc impediri debet intentio communitatis agentis, propter tranſactionem, habitam inter partes anno 1431. & die 28. menſis Octobris, quæ tranſactio omnino videtur obſeruanda, nec videtur audienda communitas contra eam inſiſtens. Aut enim vult eam reſcindi ex capite læſionis: & nō poteſt per rationes, & fundamenta domini conſulentis. ſed ex alio dicto reſcindi non poteſt, quia illi remedio reſciſſorio ſuit præſcriptum, ſpacio quadraginta annorum contra ipſam communitatem. Imol. *in conſil. 99. in fin.* Corn. *in conſ. 71. colum. 5. in 6. dubio. libr. 4.* Imo hic lapſum eſt tempus centum annorum, quod tempus ſufficeret, etiam contra Eccleſiam Romanam. *in authen. vt Eccleſ. Roman. cen. an. gau. prim.* ¶ Aut vult communitas contra tranſactionem diſcedere, per viam reſtitutionis in integrum, & ſimiliter non poteſt, lapſo quadriennio, etiam computando à die ſcientiæ, nam ignorantia allegari non poteſt, cum perceperit communitas annuam penſionem de-
5 bitam virtute ipſius tranſactionis. ¶ Qui † enim ſoluit, vel recepit debitum ex inſtrumento aliquo, non poteſt talis inſtrumenti ignorantiam allegare. Bart. *in l. qui Romæ. § duo fratres. quæſtio. 3. verſic. pone ex alio ff. de verbor. obligat.* Alexand. *in conſil. 4. colum. pe-*

nult. lib 2. Dec. *in conſil. 267. colum. 1. circa med. & in conſil. 287. colum. fin.* ¶ Aut vult vniuerſitas tranſactionem impugnare ex capite nullitatis. & non poteſt, quia iuri agenti de nullitate, præſcribitur triginta annis contra priuatum, & contra communitatem annis 40. *gloſſ. in c. vnde quæritur. in fin. gloſſ. magna. 35. quæſt. 9.* Ange. *in l. ſicut per not. per gloſſ. ibi. Cod. de præſcript. triginta vel quadrag. ann.* Bald. *in l. ſcire oportet. § fin. Digeſt. de excuſ. tut. & in l. data opera. colum. 16 Cod. qui accuſ. non poſſunt* Salic. *in l. ſi præſes. Cod. quomodo & quan. iudic.* Card. *in clem. 1. quæſt. 14. de re iudic.* Alex. *in conſil. 59. colum. 4. lib. 4.* Socin. *in conſil. 10. colum. fin. circa med. lib. 4.* Corn. *in conſil. 102. colum. 1. circa med. verſic. præterea in ceſſatione* [illegible] *lib. 1.* Dec. *in conſil. 8. col. penult. poſt med. verſ. & retenta concluſione prædicta.* ¶ R[illegible] nullitate agi non poteſt, quia vbi nullitas aliqua [illegible] tam poſſet illa recta [illegible] tranſa-
6 cta eſt, per [illegible] tranſactione ſecutas ipſius communitatis, nam † ratificatur contractus, [illegible] ſolutiones facta virtute ipſius contractus, ſeu quod [illegible] ex ipſo contractu. Paul. de Caſt. *in conſil. 116. Viſo compromiſſo. col. in pen. ad fi.* [illegible] *in conſil. 85. ſi* [illegible] *col. fin. lib. 2.* Vero[illegible] *circa fin.* & dicit Cald. *in conſ.* [illegible] *de cenſib.* quod ſi epiſcopus con[illegible] eccleſiam, ſub ſolutione annui cenſus, & ſucceſſor [illegible] piat talem cenſum, ex tali receptione cenſetur ſucceſſor ipſam conceſſionem approbare. Alibi [illegible] Bald. *in conſil. 184. Ad intelligentiam quæſitorum lib. 1.* quod ſi pupillus factus maior, aut heres pupilli recipiat cenſum debitum, ex alienatione rei ipſius pupilli, nulliter facta, cenſetur ipſam alienationem ratificare. *argum. l. ſi proponas. §. 1. in fin. ff. de inoffic. teſta. l. ſi prætoriis ff. de bonorum poſſeſſ. contra tab. §. fin. inſtitut. de rerum diuiſio.* tradit Alexand. *in conſil. 117. lib. 5.* Dec. *in conſil. 154. column. 3. in verſicul. præterea in caſu noſtro.* ¶ Et magis in terminis facit dictum Speculat. *in titul. de ſyndico § 1. verſi. ſed pone.* quod vniuerſitas ſoluit expenſas, occaſione negociorum ab eo, qui ſe geſſerat vt [illegible] vniuerſitatis, cenſetur ipſa geſta ratificare, & ſic actus nullus geſtus nomine vniuerſitatis, cenſetur tacite ratificatus, per ipſam vniuerſitatem. quod dictum Specul. refert & ſequitur Alexan. *in conſil. 127. Viſo inſtrumento colum. 1. & in conſil. 175 in fin. lib. 5.* Decius *in conſil. 162. in princ. verſic. accedit vlterius in conſil. 297. colum 1. circa medium & in conſil.* [illegible] *colum. 1. circa fin. verſic. & vlterius talis legitimatio.* Alibi ſcribit Ca[illegible] *in conſil. 101. colum. 2. in fin.* quod communitas ſoluens aliquid [illegible] alicuius tranſactionis, cenſetur ipſam tranſactionem approbare. Ergo non videtur dubitandum ratificatam eſſe tranſactionem, de qua agitur per tot receptiones, penſionis annuæ, debitæ per ipſa tranſactione. ¶ Fortius voluit Abb. *in conſil. 16. colum. 3. circa medium. lib 2.* quod communitas recipiendo laudum, ſeu inſtrumentum laudi, in quo ſyndici interuenerunt, & [illegible] cendo, cenſetur laudum ipſum approbare, ſi ex illa receptione vnius inſtrumenti laudi, cum taciturnitate laudi [illegible] ratificatio, quanto fortius per implementum eius, quod in laudo continetur. Imo ex facto vniuerſitatis inducitur ratificatio, etiam quando agitur de pœna, ideo ſi communitas retinet & poſſidet rem inuaſam, per eius adminiſtratorem, cēſetur ipſam inuaſionem ratificare. Calcar. *in conſilio 21. column. 2. ante medium.* Itaque fruſtra allegatur nullitas tranſactionis, toties & tam tacite ratificatæ. ¶ Imò contractus ſemel approbatus non videtur amplius reſcindendus. Bartol. *in l. Iulianus. § ſi quis. ff. de actio empt.* ſimile videmus, quod poſt approbationem laudi, expreſſam, vel tacitam, reſultantem ex aliquo facto, puta, ſoluēdo aliquid de contentis in laudo, reductio ad arbitrium boni viri [illegible] poteſt. Angel. *in conſilio 315.* Veronenſ. *in co*[illegible] *ſed quarto principaliter.* Corn. *in conſil. 82. colum.* [illegible] *lib.* [illegible] ¶ Ex quo [illegible] infertur. quod arguendo à ſufficienti partium enumeratione, nō poteſt communitas Caballarii maioris tranſactioni [illegible] contrauenire. ¶ Sed dicet aliquis, videtur, quod tranſactio non habeat locum in iſtis oneribus, adeo inſolitis, propter bellum, maximè ſtante edicto regio, quod tamen non vidi. Ad iſtud reſponſum eſt, per D. conſulentem, quod procederet in priuilegio exemptionis, gratuito. ſed hic ſumus in exemptione conceſſa, per pactum, conſiderat etiam qood hic nulla eſt exemptio. Imò grauamen in domino Motironi, qui ſe obligauit ad onus annuum, cum in nihilo teneretur. Conſiderat etiam, quod in tranſactione ſunt verba prægnantia, quæ ad caſum iſtum belli extendi poſſint. ¶ Pro confirmatione, conſidero, quod, vbi agitur de priuilegio, † illud à principe reuocari po- 7
teſt, de plenitudine poteſtatis, etiam ſine cauſa. *l. quiſ fundus. C. de omni agro deſerto lib. 11. gl. in c. decet. de reg. iuris lib. 7.* Baldu. *in conſ. 429. Amplius colum. 3. circa med. lib. 3. & in conſil. 300. Ad euidentiam præmitto. colum. 1.*

colum. 1. *lib.* 5. Angel. *in l. Antoninus* [illegible] *in conſil.* 15 *colum. fin. lib.* 6. Secu[illegible] non [illegible] poteſt p[illegible] [illegible] plen[illegible] poteſta[illegible] [illegible] *c. 1. de pr. obser.* [illegible] *habetur in l. in. C. ſi contra ius vel vtil. publ. & in cap. quæ in eccle*[illegible] *nium de const.* cauſam autem de[illegible] [illegible] quæſit[illegible] actu [illegible] de iure gentium oportet, quod reſpiciat [illegible] principaliter. Bartol. *in l. quæcunque in* [illegible] *C. de* [illegible] *instrumen lib.* 10. Paulus de Caſtr. *in conſil.* 178. *Damasto* [illegible] *in conſil.* 129. *Viſis & ponderatis colum.* 1. *post me*[illegible] *& in* [illegible] *Primum dubium colum.* 1. *in fin. lib.* 1. Decius *in conſil.* [illegible] *colum. penult. in verſi. ſecundo respondetur.* & alibi ſæpe Doctor. ¶ [illegible] reſpicit vtilitatem publicam, propter [illegible]. Reſpondeo, quod vtilitati publicæ pro[illegible] cum iactura alterius, ideo quando princeps, ex ca[illegible] vtilitatis, aufert rem alterius, tenetur precium [illegible] rei aut aliter compenſare. *leg.* 2. vbi Bald. *Cod. quibus ex cau. [illegible] propria* [illegible] *lib. act.* Bartol. & Doctor. *in leg. fin.* §. 1. *ff. de pign.* [illegible] Alexand. *in conſil.* [illegible] *in* 2. *dub. lib.* 6. Iaſon *in l. Barbarius* [illegible] *colum.* 8. *verſi. sed invenio tamen de offic. præto. in conſil.* 1. *colum.* 6. *post med. lib.* 1. *& in conſil.* 2. [illegible] *in* 8. *circa me. lectum li* [illegible] *in conſil.* 16. *colum.* 4. *lib.* 4. deciſi. Neapol. *deciſ.* 420. *colum. penult. in num.* 16. in quibus locis ideo voluerunt Iaſon & deciſ. Neapol. etiam quando interaius dominium per viam legis generalis, licet hoc vltimum difficultate non [illegible]. Itaque cum domini Motironi non prætendant, ſe obligatos ad onera talearum, & tandem, in caſu valde dubio, [illegible] ad tranſactionem, non eſt veriſimile, quod Princeps in ſuo edicto generali intenderit, voluiſſe prouidere vtilitati publicæ, Caballarii maioris, cum incommodo & præiudicio tertii, & quod voluerit derogare iuri tertio competenti, ex tranſactione. Hinc videmus, quod diſpoſitio concernens vtilitatem publicam reſtringitur, quando agitur de præiudicio tertii. Socin. *in conſil.* 275 *colum.* 5. *verſic. nam licet* [illegible] 1. *per text. in l.* 2. *in prin. ff. ad municip. iuncta l.* 1. *in tim. ff. de admin. tutor.* ¶ Secundo reſpondeo, quod tunc demum poteſt Princeps ius alterius auferre [illegible] cauſa publicæ vtilitatis, quando ipſi vtilitati publicæ aliter prouideri non poteſt Innoc. & Doct. *in cap. in noſtra de conuerſ.* [illegible], quod princeps in capitulis pacis non poteſt remittere bona [illegible], & tamen pertinet pax ad publicam vtilitatem, [illegible] Doct. procedere quando pax aliter haberi poteſt, [illegible] habeti pax non poſſet, quia tunc [illegible]. Anch. *in reg.* [illegible] *de regul. iur. lib.* 6. ſequitur Soci. [illegible] §. *& quod ſi tantum. colum.* [illegible] & ibi Iaſon [illegible] *ſi alt.* [illegible] *de liber. & posthum.* ſed dubitandum [illegible] potuiſſe [illegible] vtilitatem Caballarii maioris, [illegible] publicæ prouidere ſine incommodo & derogatione iu[illegible] illuſtriſſ. domini Raconixii domini Motironi, ergo, &c. ¶ [illegible] reſpondeo, quod edictum generale principis per[illegible] poteſt ad cauſam huius tranſactionis iuratæ, quod [illegible] derogare iuri competenti, ex tranſactione iurata. *gloſſ. in cap.* [illegible] *de elect. lib.* 5. *pro hoc text. in cap.* [illegible] *de reſcriptis.*

3 [illegible] generalis ceſſatio ſtatutorum, facta per principem, non trahitur ad ſtatuta iurata. Ang. *in l.* 1. §. *quæ onerandæ. Digeſt. quarum rerum actio non dat.* ſequitur Alexand. *in conſil.* 26. *colum. final. in conſil.* [illegible] *colum. penult. in fin. libr.* 1. *& in conſil.* 101. *colum.* 2. *lib.* 4. In quare conſidero, quod ſtatuta habent robur à principe, qui poteſtatem dedit populis ſtatuendi, ob id appellantur ſtatuta, ius ciuile. *l. omnes populi. ff. de iuſtit. & iur.* ideo poteſt princeps derogare ſtatutis [illegible] ad libitum, & ſine cauſa, de plenitudine poteſtatis, quia princeps eſt ſupra ius ciuile. ita Bald. *in conſil.* 167. *In cauſa præſenti colum.* 1. *post med. verſic. ſed quod potentum. lib.* 1. tamen generalis ceſſatio aut derogatio ſtatutorum non trahitur ad ſtatuta iurata, licet poſſit princeps, qui ipſe non iurauit, derogare, quanto minus generalis ceſſatio, aut ſuſpenſio exceptionum & immunitatum facta, per edictum generale, trahi debet ad exemptionem competentem, ex tranſactione iurata, & ſic ex contractu de iure gentium, quod ius non poteſt princeps tollere ſine cauſa, vt ſupra probatum eſt. & præ[illegible] ſemper intelligo præſuppoſit[illegible], quod verba tranſactio[illegible] ſint adeo ampl[illegible], vt pertineant ad cauſam iſtius [illegible]. An autem verba tranſactionis ſint ita ampla, non poſſum [illegible], quia inſtrumentum tran[illegible] minime vidi [illegible]. ¶ Quint[illegible] reſpondeo, quod edi[illegible] [illegible], vt audio [illegible] habet in bonis allodialib[illegible] & ſine dubio aliquo [illegible] conſtat eſſe [illegible] quib[illegible] videntur [illegible] ſoluntur an[illegible] floreno-

tum. [illegible] tegr[illegible] tribu[illegible] dalia, quatenus [illegible] & [illegible] quater [illegible] feudalibus, in [illegible] de h[illegible] dum qualitate [illegible]. *l. quæritur ff.* [illegible] Gemin. *in cap. ſi duo. per* [illegible] *text. de off.* [illegible] *in dubio* vbi Abb. *in* 2. *not.* [illegible] quod vbi eſt ius pari[illegible] le [illegible] totum, quia qu[illegible] Rota *deciſ.* 122. *Nota, quod Papa in antiq.* [illegible] tent[illegible] dign[illegible] allodio dignius eſt. Rurſus ſunt plu[illegible] feudum, quam allodium, [illegible] quod cæteris paribus, ſtatus [illegible] *cap. in nobis. l. licet ex quadam & cap. licet vniuerſis* [illegible] *teſtib.* [illegible] *ſtr.* §. *poſtquam. verſic. fin.* & plura vincu[illegible] *pater. ff. de adoption. authent.* [illegible] *& authent. itaque Cod. commun.* [illegible] *ceſ.* [illegible] quod plus eſt vinc[illegible] Bald. *in conſil.* 300. *Tres ſunt ca*[illegible] *colum.* 2. *circa medium.* [illegible] Rurſus in ha[illegible] bonorum, participanti inde feud[illegible] & allodio, [illegible] debet, q̃ domino ip[illegible] honorũ [illegible] 265 *Orta materia col.* 1. *in fin. per tex. in l. qui habet* §. 1. *ff. de tut.* [illegible] *l. qui habet.* §. 1. *ff. de tutela & not. in* [illegible] *quibus cauſ.* [illegible] dom. Raconixii procul dubio fauorab[illegible], quod [illegible] dicantur feud[illegible], cum etiam ceſſan[illegible] bon[illegible] ſit vaſallus. ¶ Iam cauſa coll[illegible] odioſa. Abbas *in conſ.* 120. *col.* 1. *lib.* 2. Corn. *in conſil.* 181 *col.* 4. *lib.* 1. *& in* [illegible] ſed in odioſis diſpoſitio loquens in caſu ſimpl[illegible], non tra[illegible] ad caſum mixtum *l. cum paſſim* §. *præſcriptione ff. de adul.* Bald. [illegible] Doctor. *in l.* 2. *in prin. ff. de verb. oblig.* Rom. *in conſil.* 204. *hoc confirſio* [illegible] *post med.* Imol. *in conſil.* 105. *col.* 3. *ante med. & in conſil.* 165. *col.* 3. *ante med.* Alex. *in conſil.* 67. *col.* [illegible] *lib.* 5. Dec. *in conſil.* 213. *col.* 1. *in verſic.* 2. *quia eſt caſus mixtus.* Iaſ. *in conſil.* 64. *in prin. lib.* 4. Ideo edictum leg[illegible], loquens in bonis allodialibus, trahi non debet ad bona, q[illegible] negantur allodialia, ſed dicuntur feudalia, aut ſaltem [illegible] ſunt naturæ. Ita de iure reſponde[illegible], ſaluo ſaniori iu[illegible], quum acta non vidi. Saluciani 2. Februarii. 1546. Aymo Crauet[illegible] ex Sauiliano I. V. D.

S V M M A R I A.

1 *Literæ priuilegij principis, debent eſſe ſubſcriptæ manu ipſius prin*[illegible]
2 *Ex obſeruantia, ſubſecuta, inualuit donatio, vbi plene probata non erit.*

CONSILIVM CCLXXVII.

Pro filiis & heredibus nob. Ioann. Caſanoti, ciuis Saluciarum, & Theſaurarii Marchionalis, dum viueret, contra nobilem Catharinam Cauatia, ex Carmagnolia.

DIVINO ſubſidio ex corde poſtulato. In hac cauſa heredum, nob. quondam Ioan. Caſanoti, ciuis Saluciarum [illegible] Theſaurarii Marchionalis conuentorũ, contra nob. Catharinam Cauaciæ, agentem coram Magn. conſil. Marchionali, duo principaliter videnda ſunt. Primum, an ipſa Catharina agens, probauerit eius intentionem? Secundum, an vbi probaſſet, [illegible] dicatur eliſa, per exceptiones reorum. ¶ Circa primum ipſa agit, tanquã heres quondam Spec. domini Pauli de Claris, ciuis Papienſis, ſed cum ſit ſpuria patri eius, ab inteſtato non ſuc[illegible], nec ex teſtamento *auth. licet in fin. C. de natur. liber. auth. ex complexu. C. de ince. nup.* poſito, quod eſſet naturalis, non poſſe [illegible] dere ab inteſtato, niſi in duabus vnciis, non extante ſobo[illegible] gitima *dicta auth. licet.* ſed ipſa agens, poſſidet totam hereditatem paternam, vt teſtes eius dixerunt, & ſic longe vltra duas vn[illegible]. Rurſus contra reos, vbi duas vncias conſecuta non eſſet, ſolum poſſet agere pro duabus vnciis de duodecim, & non a[illegible] vineam & nemus, ergo, &c. ¶ Non obſtat, quod d[illegible] tiniata ad inſtantiam p[illegible], quia non apparet de poteſtat[illegible] Comitis [illegible] ma, hde[illegible] te, nam literæ pri[illegible] ipſius principis. [illegible] Bald. [illegible] ¶ [illegible] cundo, in priuilegio princip. [illegible] principaliter aut[illegible] Angel. *in leg.* [illegible] *princip. Codic. de quadrien. præſ. ript.* & [illegible] *in Liter.* [illegible] *verſ. reſcript.* quod in priuile[illegible] qua originale pr[illegible] Angel. dicta re[illegible] *conſilio*[illegible]

verſ. hoc præſuppoſito [illegible] tropœ ul [illegible] ral [illegible] ſe nihil [illegible] de [illegible] Baldi, neque de [illegible] ligni legitimo, [illegible] mandatum [illegible] ſc. [illegible] rum appellation [illegible] ſc. non [illegible] go [illegible] ſed [illegible] Te [illegible] pro- dire [illegible] potestatis legitimandi, ſed tantum in [illegible] copia ipſios aſſerti [illegible] non [illegible] *arb. ſi quis in aliquo documento* [illegible] C. *de edendo.* Nec [illegible] nat, quod aſſerta ſit Copiam [illegible] gitimatione, [illegible] ipſum originale priuilegium eſſet deperditum, [illegible] ſeruatio de conſenſu reorum, aut eis vocatis, de quorum præiudicio agitur. vt habetur *in cap. venerabilis* vbi Decius *colum. fin. de confirmat. vtili vel inutili.* ideo probatione non videtur [illegible] pri- [illegible], contra quod merito oppoſitum fuit, de [illegible] pura [illegible] cedula incipiente [illegible] examinati [illegible] ¶ [illegible] to, poſito & [illegible] alleratum priuilegium [illegible] faceret, ex alio non obſtet aſſerta legitimatio, tanquam facta per Comitem Palatinum, creatum [illegible] rege Romanorum, quæ legitimatio effectum operari non poteſt, extra territorium & iuriſdictionem Romani Imperii *capit per venerabilem qui filii ſint legitimi.* Bartolus *in l.* [illegible] *colum. 15 verſic. ſed inſurgit forte dubium. Cod. de ſummma Trinitat. & fide Catholica. & in authent. ex complexu. in fin. Cod. de inceſtis nuptiis.* ſequitur Ancharan. *in conſil. 320. primum dubium col. 2. post m. dium. verſic. poſtremo in caſu conuerſo.* Paulus de Caſtro *in conſ. 34. ſuper primo dub.* [illegible] *videtur decendum,* [illegible] *legitimatio volumn. 1. circa medium. & in conſil. penult. colum. 4. circa medium verſic. vnd. dubitat Innocentius. &* [illegible] *olum. 8. in fin. verſic. hoc ſic pro vtraque parte allegat.* [illegible] *libr. 1.* Socinus *in conſil. 55. colum. 2. ante medium. libr. 3.* Cornel. *in conſil. 9. colum. fin. libr. 4.* ſed bona de quibus agitur, ſunt in [illegible] Saluciarum, qui non ſubiicitur Imperio &c. ¶ [illegible] remanet abſolutum primum dubium, quod non [illegible] geos ad integrum intentionem ſuam. Et conſequenter ſuperfluum [illegible] ſecundum dubium, an intentio [illegible] dicatur eliſa, per exceptiones reorum, tamen ad maiorem [illegible] nem quo plenius [illegible] fiat reorum cauſa, dico, quod [illegible] intentio plene eſſet iuſtificata, illa probatur omnino [illegible] per exceptiones [illegible]. & pro fundamento conſidero quod [illegible] tentaum poſſeſſionum adipiſcendæ, tanquam [illegible] patris. quod [illegible] quorum [illegible], quia non habet heres aliud poſſeſſorium adipiſcenda, quam [illegible], quorum bonorum, textus eſt clarus *in* [illegible] *de* [illegible] *de interdi.* [illegible] *colum tituli ff. & C. quorum bonorum.* [illegible] præſuppoſito quod [illegible] tatum fuerit interdictum. quorum bonorum, dico [illegible] non competere ex pluribus. ¶ Primo, quia remedium poſſeſſionum adipiſcendæ, non poteſt amplius durare quam [illegible], ve [illegible] dicti, quorum bonorum. tradit Bartol. *in l. 1. in* [illegible] *colum. 1. verſ.* [illegible] *ſolutionem ff. quorum* [illegible] *heredit.* [illegible] *de* [illegible] *heretatum.* ſed in caſibus [illegible] heredita[illegible], contra titulo poſſidentem ſufficit præſcriptio longi temporis decem annorum inter præſentes, & [illegible] *l. h.* [illegible] *C. in quib. caſ.* [illegible] *ff. longi tempor. pr.* [illegible] *Iulianus ff. de* [illegible] *quorum bonorum.* [illegible] ducatu [illegible] non excludit petitioni hereditatis, oper [illegible] præſcriptio [illegible] præſcriptio longi temporis, [illegible] post mortem definenti, de [illegible] petitionem hereditatis. Baldus [illegible] *de edicto diui Adriani tollendo* [illegible], quod [illegible], præſcribit longo tempore [illegible] Caſtro *in conſil.* [illegible] *24. quæritur primo in vltimo dubio. C.* [illegible] *conſil.* [illegible] *circa medium. libr. 2.* ſi enim titulus excluderet petitionem hereditatis, fruſtra tractaretur de eius præſcriptione. & iſta eſt ratio, quare in petitionis præſcriptione hereditatis, requiritur tempus longiſſimum triginta annorum, quia non datur contra titulo poſſidentem, [illegible] titul[illegible] autem præſcribi non poteſt, niſi tempore longiſſimo, cuius præſcriptio longi temporis requirat titulum & bonam fidem. *l. diutina C. de præſcriptione longi temporis.* [illegible] declarat *in l. hereditatis C. de petitione hereditatis.* ¶ His ita declaratis, dico, quod [illegible], & eorum pater, poſſederunt ex iuſto titulo donationis, aut [illegible] titulus habitus à defuncto, eſt validus, & habeo [illegible] excludit petitionem hereditatis, aut non poteſt eſſe iſte titulus ad excludendum petitionem heredi-

ditatis [illegible] bonorum, & [illegible] ex quo agi [illegible] poſſidentem, dico, quod ſufficit præſcriptio longi temporis, id eſt decem annorum inter præſentes, & [illegible], quod pater [illegible] ſtatim [illegible] poſſedit [illegible], poſt mortem donatoris [illegible] Petri [illegible] Cella, & [illegible] poſſederunt vltra viginti annos, [illegible] quia [illegible] donaint de anno [illegible] vt deponit octauus teſtis, præſente nobili Anton Ba[illegible] de quo etiam [illegible] annorum, deponunt teſtes reorum, videlicet primus teſtis [illegible] ſecundus, tertius, quartus, quintus, & ſextus teſtes reorum, deponunt. quod mortuo domino Petro de Cella donatore nob. quondam Doctor [illegible] Caſinon [illegible] cœpit poſſidere ipſa bona, & ſucceſſiue [illegible] eius filii & [illegible] teſtes optime concludunt de poſſeſſione [illegible] tra annos [illegible] coniuncto [illegible] octaui teſtis [illegible] q[illegible] deponit de morte ipſius d. Cella, [illegible] no 1522. [illegible] etiam morte deponit Rolandus de Vexino, ſeptimus [illegible] reorum. Iam de tempore mortis apparere poteſt per librum fratrum [illegible] Auguſtini, ciuitatis Saluciarum, [illegible] templo ſepulturam diuitur cadauer donatoris. Se[illegible] hic [illegible] debet præſcriptio decem annorum, [illegible] pars dicit quod [illegible] Thomas de Cella, fuit heres domini Petri, qui dominus Thomas habitabat Saluciis & [illegible] præſcriptione decennia inter præſentes. ¶ [illegible] iſte titulus donationis dicatur ſufficiens ad præſcribendum, contra petitionem hereditatis, poſito, quod illam [illegible], prout [illegible], & etiam interdictum quorum bonorum, [illegible] oſtendi [illegible], quia ſolus [illegible] inducit [illegible] ad præſcribendum, contra petitionem hereditatis, vt ſupra dictum eſt. ſed [illegible] error pluſquam [illegible], quondam eorum patri, cui putarent iſta bona [illegible] pertinere, inducitur ex donatione domini Petri de Cella [illegible] deponunt, vt infra dicam: nam error [illegible] ſufficiens [illegible], inducitur ex aſſertione [illegible] *aut* [illegible] *ff. de condit. & demonſtrat.* Baldus *in* [illegible] *de* [illegible] *in cap. quarta. col.* [illegible] *poſt medium de* [illegible] aſſertione aliena, [illegible] alieno inducitur [illegible] ad præſcribendum [illegible] *ff. pro emptore.* [illegible] *in fin. ff. pro* [illegible] *l. Celſus. volum. 1. ff. de vſucap.* vbi [illegible] hoc [illegible] aſſerens ſuper [illegible] autor [illegible], qui [illegible] & teſtificetur [illegible] ad propriam vtilitatem, licet enim talis aſſertio [illegible] non probat, [illegible] eſſet error in facto proprio, [illegible] error iuſtiſſimus, & Bartolum ſequitur Bald. *in d.* [illegible] *in 4. quæſt.* itaque [illegible] iuſtum titulum ad præſcribendum, quanto fortius [illegible], id eſt, donationis [illegible], de qua [illegible] deponunt duo teſtes inſtrumentarii, [illegible] Auguſtinus de Panchale [illegible] & Rolandus de Vexino, [illegible] probatio [illegible] per teſtes deponentes de auditu de quo auditu deponunt primus, [illegible], & quintus teſtes reorum, qui teſtes de auditu alieno, inducunt præſumptionem & prob[illegible] aliis adminiculis. Arch. *in cap. hoc videtur. 22. quæſt. 5. per textum. in cap. præterea. de teſtibus. & in cap.* [illegible] *de ſucceſſ. ab inteſtat.* not. Do[illegible] *de teſtibus.* Alex. [illegible] *in conſil. 236 in fin.* [illegible] 6. & tantum inducitur præſumptio [illegible] probandi contrarium, [illegible]. Bald. *in conſ.* [illegible] *teſtes.* [illegible] *præterea ſaltem tale* [illegible] *libr. 4.* Ar[illegible] *in d. cap. hoc videtur.* quod [illegible] chid. dictum pro mirabili refert & ſequitur Rom. *ſing. 341. teſtimonium de auditu.* Socin. *in conſil. 295. volum. 2. circa medium. verſ. ſecundo principaliter. lib. 2.* Dec. *in conſil. 272. colum. 2. circa medium. & in conſil. 595. volumn. 1. in fine.* vbi tamen Rom. Socin. & Decius de Baldi conſilio mentionem non faciunt. Si teſtimonium de auditu inducit præſumptionem, & iunctum cum aliis adminiculis, plene probat, quanto fortius inducetur plena probatio in caſu [illegible] vbi teſtimonium de auditu, iungitur cum teſtibus duobus deponentibus de veritate [illegible]. ¶ Confirmatur etiam probatio iſtius donationis, quia teſtes inſtrumentarii examinati conueniunt, in perſona notarii, qui dicitur rogatus de inſtrumento donationis, id eſt, nobil. Franciſci Arnandi, ſimiliter primus teſtis reorum deponit, dici audiuiſſe à memorato Franciſci Arnandi eius patre, quod recepit ipſum inſtrumentum donationis. Rurſus Dominus Antonius Durandi dicit extraxiſſe ipſum inſtrumentum donationis. ¶ Tertius etiam teſtis reorum, Guthelmus Murator, alias de Puteo, dicit audiuiſſe, quod dictus Arnandi receperat ipſum in-

Pp ſtrumen-

[illegible] umentum donationi. ¶ Ex quibus [illegible] quod etiam ceſſantibus teſtibus inſtrumentariis [illegible] ex [illegible], plene videtur probata intentio reorum. nam teſtes [illegible] de auditu inducunt præſumptionem, quæ [illegible] plene iuncta cum aliis adminiculis. ſed his efficaciſſima ſunt adminicula, ſurgentia ex teſtimonio domini Durandi, qui atteſtatur de facto proprio ſine eius intereſſe, id eſt, quod ipſe extraxit inſtrumentum donationis, quo caſu fortius probat Innoc. *in cap. inquiſitione.* Anton. de Butr. *in c. cum cauſam de teſtib.* & Paulus de Caſtro *in conſil. 186. In cauſa quæ vertitur Piſis colum. 1. in conſil. 331. In cauſa Sylueſtri colum. 1. circa fin. libr. 1.* Ar[illegible] *in conſil.* [illegible] *1. Diligenter & mature colum. 2. verſic. ſecundo conuincitur.* Similiter adeſt teſtimonium filii notarii, quod audiuit [illegible] patre de donatione, adeſt etiam teſtimonium tertii teſtis circa perſonam notarii, qui donationem recepit. Quibus omnibus ſimul iunctis, negari non poteſt, plene eſſe probatam intentionem reorum, etiam ceſſantibus teſtibus inſtrumentariis, & ex pluribus indiciis & præſumptionibus plena ſit probatio. *in l. indicia. l. ſuper. Cod. de rei vendic. cap. ad noſtram de empt. & vendit. capit. illo vos. de pignor. capit. in domeſt. de viuris gloſſ. in l. 3. §. eiuſdem. ff. de teſtibus. in l. 2. §. 1. ff. de excuſat. tutor. in l. inſtrumenta Cod. de probatio. in cap. accedens vt lite non conteſtata. in cap. cum cauſam de probat. in capit. cum dilectus. de ſucceſſ. ab inteſt.* Roman. *in conſil. 7. & 8.* Imol. *in conſil. 148. column. 1. circa medium* Calca. *in conſil. 77. colum. 1. in fin. & colum. ſequ.* Barba. *in conſil. 39. colum. 6. verſicul. nec obſtat libr. 4.* Stantibus autem illis teſtibus duobus inſtrumentariis, poſita videtur res extra omnem controuerſiam. ¶ Vltra teſtes inſtrumentarios, vltra teſtes de auditu ipſius donationis, vltra teſtes deponentes, de notario, qui inſtrumentum recepit, vltra teſtimonium domini Durandi, qui ipſe inſtrumentum extraxit, concurrit & aliud fortiſſimum ad implendam probationem ipſius donationis, id eſt, obſeruantia ſubſecuta ad formam donationis, nam teſtes dicunt ſe donatione vineæ cum nemore facta patri reorum, per tempus infirmitatis donatoris, deinde probatur, quod mortuo donatore, illico donatarius cœpit bona donata poſſidere, in qua poſſeſſione ſemper continuatum eſt, vltra [illegible] annos viginti continuatur per ipſos reos. quæ poſſeſſio præſumitur ſubſecuta ex titulo donationis præcedentis. *l. quædam mulier. ff. de rei vendic. l. 2. Cod. de acquirenda poſſeſſione.* à primordio enim tituli poſterior formatur euentus. *l. vnic. circa finem. Cod. de impo. lucra. deſcriptio. libr. 10.* quæ præſumptio ideo fit, quia alias præſumeretur delictum in poſſidente, quod mala fide, & ſine iure rem alienam poſſedit: delictum autem præſumi non debet. *l. merito. ff. pro ſocio.* Bartol. & Doctor. *in l. non ſolum. § vt probari ff. de oper. noui nunti.* & profecto veriſimile non eſt, quod vnus Thomas [illegible] Marchionalis, vir nominis integerrimi, auſus fuerit occupare de facto vnam vineam cum nemore in loco tam publico & proximo ciuitati, imo & vineæ Illuſtriſſ. Domini Marchionis. ¶ Et quod ex obſeruantia ſubſecuta, id eſt, ex poſſeſſione bonorum donatorum, ad formam donationis, ſuppleatur probatio donationis, vbi alias ad integrum & plene probata non eſſet, prout eſt probatus per textum *in l. 1. 2. & l. ſi non ſcriptam. Cod. de fideicommiſſ.* vbi ſi heres obſeruat relicta, in voluntate minus ſolenni, præſtando legata aut relicta, ex tali obſeruantia approbatur voluntas minus ſolennis, nec repeti poteſt, quod præſtitum ſit, eodem modo cum probatum ſit donatarium, & eius heredes tanto tempore poſſediſſe bona, quæ dicuntur donata, & paſſus fuerit, D. Thomas de Cella, heres donatoris, bona poſſideri, ex tali obſeruantia approbata cenſetur ipſa donatio. Et maxime illud procedit, quia allegari non poteſt, quod ignoraret heres bona donata pertinuiſſe ad donatorem, cum eſſent fratres ſimul habitantes, & bona donata ſint prope ciuitatem, vt depoſuerunt teſtes agentis. Poſtquam igitur veriſimile eſt, quod ideo D. Thomas de Cella heres paſſus fuerit poſſideri bona, per notarium, & [illegible] heredes, quia ſciret de [illegible] donatione, de qua etiam ſcientia deponit quintus teſtis [illegible] orum. ¶ Pro hoc, quod ex obſeruantia ſubſecuta iuuetur [illegible] ob [illegible] donationis, vt plene probata non ſiet, prout eſt [illegible] du[illegible] dictum Cynum *in allegationibus ſuis inter conſilia Bald. poſt [illegible] 4* [illegible] *ſuper primo puncto columna* [illegible] *libr. 4.* vbi quod initium [illegible] minus ſolenne probat, quando ſecundum [illegible] ſunt [illegible] obſeruat [illegible]. Id in volun [illegible] B[illegible] *in conſilio 4* [illegible] *2.* [illegible] *an per ſolenn. teſtamentum. in pr. libr.* [illegible] *in* [illegible] *4. in princip. libr.* [illegible] men Iaſon præmiſſis non [illegible] quæ [illegible] præcipua [illegible]

L[illegible]ngiſſimi t[illegible] poſt [illegible] ſuffic[illegible] donata [illegible] ſeruatum, [illegible] *in conſilio* [illegible] *columna* [illegible] vbi repe[illegible] ſtant [illegible] p[illegible] [illegible] perm[illegible] probatus [illegible] non [illegible] longo [illegible] tua per [illegible] ideo [illegible] petitio [illegible] non competit [illegible] tem titulo [illegible] defuncti. *dict.* [illegible] *ff. de pet. hered. &* [illegible] *hereditatis* [illegible] *ff. Codic. eodem titulo* & [illegible] titulus habitu[illegible] tertio, non donatio [illegible] exclud[illegible] hereditatem [illegible] quam [illegible] habitus [illegible] hic, quia [illegible] per donationem bona donata non poſſunt dici [illegible] exierint patrimonium defuncti, per eius donat[illegible] nullo modo competere poteſt [illegible] ditatis pet[illegible] in q[illegible] poterat probare bona fuiſſe he[illegible]ditaria, aut inuent[illegible] ditate *leg. non tantum. in princip.* vbi gloſſ. & Doctor. [illegible] *petitione hereditatis.* ¶ Sed diceret aliqui, tu loqueris in petitione hereditatis, ſed hic actum fuit in [illegible] dicto, quorum bonorum. R[illegible] ſpondeo, quod etiam interdictum, quorum bonorum non datur contra titulum poſſidentem. *l. prima. in princip.* [illegible] & Bart[illegible]lus *ff. quorum bonorum.* A[illegible] de A[illegible] *in §. quadrupli columna 10. in fin. verſicul. & datur* [illegible] *remedium. Inſtitut. de actionib.* Rurſus etiam [illegible] ntendit [illegible] quorum bonorum, neceſſe [illegible] probari [illegible] rem fuiſſe in bonis [illegible] ſufficiat ſummaria probatio. *dicta l. 1. in princip. ff. quorum bonorum* Bartolus *in l. prima. circa finem. Codic. eodem titul.* Angelus *in dicto §. quadrupli columna* [illegible] *poſt medium. verſicul. quæro pro* [illegible] *rebus. Inſtitut. de actione.* Sed facta donatione per de[illegible] dici [illegible] poteſt, res petitas fuiſſe in eius bonis, [illegible] Itaque concluditur, nullo modo agi potuiſſe, neque petitione hereditatis, neque interdicto quorum bonorum. ¶ Non [illegible] ſtat modo vnum motiuum ex aduerſo oppoſitum, quod ex quo duo teſtes inſtrumentarii [illegible] etiam eſſe donationem ab infirmo, præſumitur donatio cauſa mortis, quæ requirit quinque teſtes, quia reſpondeo multis modis. ¶ primo quod facta eſt donatio per iuriſconſultum, qui non [illegible] bat quod teſtes eſſent neceſſarii in donatione cauſa mortis, ob id veriſimile eſt, quod plures teſtes adhibuiſſet, ſi donare [illegible] luiſſet cauſa mortis, cum non præſumitur, quis actum velle inualidum facere *leg. 3. ff. de teſtamen. milit.* ¶ Secundo reſpondeo, quod etiam ſi facta eſſet donatio a ruſtico, coram ſolis teſtibus, in dubio præſumi deberet inter viuos, ad quem modum valere poteſt, non cauſa mortis per modum non valeret, & econtra, quia iudicatur potius cauſa mortis, quando valere non poteſt vt inter viuos, Baldus *in conſ.* [illegible] *108. Donatio lumma fin. poſt medium verſicul. item, vt ſuperius dixi. libr. 3.* Paul. de Caſtr. *in conſilio 57. Notandum. quod pr*[illegible] *libr.* [illegible] S[illegible] *in conſilio 130. columna penultima & in conſilio* [illegible] *columna 1.* Cornelius *in conſilio 25*[illegible] *columna* [illegible] *libr. 4.* & ſic ſemper [illegible] interpretatio, quod valeat donatio, prout melius de iure valere poteſt. ¶ Tertio reſpondeo, quod ex [illegible] ſolum intervenerunt tres teſtes in dubio, præſumendum eſt, quod fuerit donatio inter viuos, quia qualitas & numerus teſtium conſideratur, in cognoſcendo qualitatem donationis. Socinus *in* [illegible] *conſilio 137. columna 2. libr. 1. quod eſt repetitum in conſilio 2*[illegible] *libr.* [illegible] Cornelius *in conſilio 126. columna 1. in fin. verſic. 5. quia fuerunt adhibiti quinque teſtes libr. 1. & in conſil. 6. column. 4. circa fin. & in conſ. 6* [illegible] *libr. 3.* & pondero quod Iaſ. *in d.* [illegible] *6.* volunt hue pr[illegible] licet fiat mentio donationis inter viuos, quia ſi ſit numerus quinque teſtium, dicitur cauſa mortis. ¶ Nec obſtat, quod donator eſſet infirmus, & ob id videatur donatio cauſa mortis, quia ſola ratio infirmitatis non facit præſumi donationem cauſa mortis, etiam quod in extremis conſtitutus quis donet non tam mortis cauſa, quam moriens dicitur donare [illegible] ſi aliud dicatur textus eſt clarus *in leg. Seia §. fin. ff. de donat. cauſ. mort.* [illegible] Bartolus *in ſummario.* Iaſon *in l. qua dot* [illegible] *colum. 6. circa fin. verſicul. amplius* [illegible] *ff. ſolut. matr.* ¶ [illegible] reſpondeo arguendo a contrario, donatio in dubio [illegible] cauſa mortis quando in eaſit mentio mortis [illegible] *d. don. cauſ. mort.* Seia. *cum gloſſ. ff. de dote prælegat. gloſſ. in l.* [illegible] *capimus. § Titia ff. de donat. cauſ. mort.* Bartolus & D[illegible] [illegible] *ff. ſolut. matr.* [illegible] *in conſ.* [illegible] *Pro declaratione* [illegible] *primo* [illegible] *in* [illegible] *14 libr.* [illegible]

[illegible] ob eam cauſam mortis donation [illegible] ſequitur [illegible] egiſſimo [illegible] & Cornel. *inter priuatos C. de pactis* ſequitur Socin. *in dict. conſil.* 137. *colum.* [illegible] *lib.* Cornel. *in conſil.* 24. *colum.* [illegible] *circa med. & in conſ.* [illegible] 9. *colum.* [illegible] *verſicul. aduertendum tamen eſt lib.* 4. Iaſon poſt Alexand. *quæ data* [illegible] *colum.* 9. *verſic.* 7. *limitat. ff. ſolut. matrim.* Quinto, [illegible] cabit [illegible] inter viuos donatio, de qua agitur facta ab initio, quæ de ſui natura in dubio præſumitur inter viuos, & quæ niſi inter viuos iudicetur inualida remaneret, nam vt valeat donatio illa præſumitur inter viuos quæ in dubio præſumitur cauſa mortis, [illegible] vt valeat donatio illa intelligitur [illegible] inter viuos ſecundum naturam ſuam. Saluiani : 4. Febr. M.D X [illegible] VI.

SVMMARIA

1 *Pater poteſt appellare pro filio.*
2 *Acceptatio debet fieri cum omnibus ſuis qualitatibus*

CONSILIVM CCLXXVIII.

Pro vniuerſitatibus Venaſchi, Brozaſchi, Melli, & Fraxini contra homines & communitatem S. Petri Marchionatus Saluciarum.

DIVINO ſubſidio ex corde poſtulato. Dubium oritur in cauſa communitatum Brozaſchi, Venaſchi, Melli, & Fraxini appellantium contra communitatem & homines, Sancti Petri Marchionatus Saluciarum, quia dicitur appellatum per non habentes poteſtatem appellandi, ob id nulla videtur appellatio cum non fuerit ratificata intra decem dies. Old. *in conſilio* 329. *Has allegationes. column. final. verſicul. præterea ratihabitio.* Specul. *in titul. de appellat.* § 1. *verſicul. porro.* Bartol. poſt Dyn. *in l.* 1. *ff. de appellat. recip.* Alexandri *in conſil.* [illegible]5. *colum.* 1. *poſt med. verſicul. & eo magis. lib.* 2. Socinus *in conſil.* 45. *colum.* 4. *circa medium. verſicul. quemadmodum probatur. lib.* 1. Nec obſtat quod ſententia dicatur nulla, quia cauſa appellationis ita demum deuoluit nullitatem [illegible] iudice appellationis quando legitime fuit appellatum, alias ſecus. Baldus *in l.* 1. *circa princip. Cod. de ſentent. ex breui recit.* Innoc. & Doct. *in capit. dilect. per illum text. de appellat.* quod dictum pro notabili tenet & ſequitur Aretin. *in conſil.* [illegible]5. *colum.* 4. *in pri. verſic. ergo* [illegible] Sed præmiſſis non obſtantibus puto appellationem legitime eſſe interpoſitam & eius virtutibus omnino conſtare, & conſequenter deuolutam eſſe cauſam iniquitatis & nullitatis ad iudicem appellationis ſequentibus fundamentis. ¶ Et primo incontinenti poſt latam ſententiam appellatum fuit per agentes pro ipſis communitatibus Venaſchi, Brozaſchi, Melli, & Fraxini, & dicitur quod interuenientes pro communitatibus Brozaſchi & Fraxini erant ſyndici & conſiliarii, & quod apparet de ſyndicatu eorum, quo caſu non eſt dubium quin ſyndicus communitatis habeat poteſtatem appellandi, nam ſyndicus vniuerſitatis creatus ab ipſa vniuerſitate habet maiorem poteſtatem quam vnus procurator priuatæ perſonæ: patet, quia talis ſyndicus cenſetur habere mandatum cum libera [illegible] *mandato generali in glo.* [illegible] *de procur.* [illegible] talis procurator poteſt omnia in quibus requiritur ſpeciale mandatum, nā poteſt deferre iuramentum. *l. iuſiur. iudum* [illegible] *ad pertinet.* § *defenſor. ff. de iureiur.* [illegible] poteſt [illegible] dubia *l. præſes C. de tranſa.* [illegible] ter poteſt petere reſtitutionem in integrum. Bald. poſt Iacob. de Aretin. *in l.* [illegible] *per procurat.* [illegible] *in integr.* [illegible] & tamen in deferendo iuramentum, in tranſigendo, & petendo reſtitutionem in integrum mandatum ſpeciale requiritur, vt habetur *in dict. locis* & not. [illegible] *l. præſes. colum* 4. Ita quod cum officium ſyndici ſit publicum, & dicatur ſyndicus legitimus adminiſtrator, habens mandatum cum libera, non eſt dubium quin poſſit & debeat appellare pro vniuerſitate, cum illud permiſſum ſit ſimplici procuratori tantam poteſtatem non obtinenti & teneatur procurator appellare licet non proſequi, vt habetur *in auſentio. C. de procur.* imo poteſt procurator vnicus qui litem conteſtatus eſt alium procuratorem conſtituere ad appellandum *l. ab executore.* § *fin. ff. de appel.* ¶ Iam ſyndicus æquiparatur patri legitimo adminiſtratori & tutori aut curatori, vt habetur *in d. l. præſes* not. Dec. *in conſil.* 2[illegible] *poſt prin.* [illegible] ſed non eſt dubium quin pater poſſit appellare pro filio, & tutor pro pupillo, nam filius poteſt appellare pro patre. *l. ex conſenſu.* § *filiusfamilias. ff. de appellat.* [illegible] fortius poterit pater pro filio, [illegible] maiorem poteſtatem habet [illegible] pater in perſona [illegible] nam econtra in patre quod poſſit appellare pro filio non videtur dubium, cum omnes [illegible] pater [illegible] vt habetur *in l. fin. C. de bonis quæ lib.* & *l.* 1. *C. de bon. mater.* [illegible] appellet [illegible] *negotiorum. in princi. & in l. tut. ff. de appell.* [illegible] *ratis appel.* Itaq. nullo modo videtur dubitandum [illegible] adminiſtrator in legitimum & mandatum generale habent [illegible] cum libera appellare poſſe. Imo tenetur ad appellandum & proſequendum [illegible] de tutore & curatore *l. tutor ff.* [illegible] *appellat.* Spec. *in tit. de appel.* § 1. [illegible] *tutores quoque.* Iaſ. *in* [illegible] *colum.* [illegible] *verſ. tertio fa*[illegible] *C. de procurat.* Sed diceret aliquis, vniuerſitas Brozaſchi & Fraxini habebat procuratorem aut ſyndicum ad iudicia, ergo videtur quod [illegible] appellatio [illegible] pertineret ad ipſum procuratorem, reſpondeo, quod poteſt [illegible] non competit procuratori, ad appellandum priuatiue [illegible] domino [illegible] ſed cumulatiue, ideo ſi procurator non appellet poteſt dominus appellare *l. ab executore* § 1. *ff. de appellat.* Specul. *in titul. de appellat.* § 1. *verſicul.* [illegible] *ſi procurator victus non appel.* pro hoc [illegible] *in cap. nonnulli* [illegible] *in fin. de procurat.* Alexand. *in conſil.* 95 *colum.* [illegible] *ſi medium* [illegible] *præterea reſerto lib.* 2. *notabil.* § [illegible] *procurator* [illegible] *in* [illegible] *cum* [illegible] [illegible] us habetur pro domino in cauſis [illegible] tur de tutore *l. interdum.* § *qui tutelam. ff. de pactis* [illegible] here dicitur vniuerſitas, quia [illegible] & [illegible] arunt quam ſyndici, ergo, &c. [illegible] poſt [illegible] uerſitatis pro ea appellare potuerit & de [illegible] qu[illegible] appellatio prodeſt aliis vniuerſitatibus [illegible] nul[illegible] do appellaſſent, ex quo omnes communitates [illegible] defenderunt, & eadem eſt cauſa defenſionis omnium, & [illegible] eſt negocium, textus [illegible] *in l. ſi quis* [illegible] § *fin.* [illegible] *appellat.* [illegible] *C. ſi vnus ex pluribus appell. & in cap. penultim. extra* [illegible] Fortius dico, quod etiam ſi tertius, quius [illegible] cauſa appellaſſet, adhuc eius appellatio prodeſſet [illegible] non appellanti, quando eadem eſt cauſa defenſionis vtriuſque, Bart. *in l. à ſententia in princip. colum.* 2. *poſt medium. verſicu. ſi vero victus ff. de appellat.* pro quo [illegible] Bart. addo text. *in d. l. ab executore* § 1. *de appellat.* [illegible] emptore condemnato & non appellante, author eius poteſt appellare, & prodeſt ſua appellatio emptori, ſicut authori [illegible] interuenienti, ratio, quia eſt idem negocium, & eadem eſt cauſa defenſionis vtriuſque. Secundo, principaliter dico, quod [illegible] ratio, etiam ceſſante ſyndicatu prædicto, appellatio prædicta eſt valida & ſolennis, nam appellare poteſt quilibet tertius, cuius intereſt etiam ratione qualis qualis præiudicii *dict. l. à ſententia in princip. ff. de appellat.* vbi Bartol. & Doct. ſed ſingularum particularium [illegible] vniuerſitatum qui appellauerunt intererat, & intereſt, ita iudicatum non fuiſſe. quia ſi vniuerſitates cogantur id præſtare, in quo fuerunt condemnatæ, hoc damno cedit ipſorum particularium propter taleas, quas maiores imponi continget, ergo dici non poteſt interpoſitam appellationem per non habentes poteſtatem, quia imo poteſtatem habebant ita appellandi, cum ipſorum intereſſet, & intereſſit, itaq; conſiderato tali intereſſe. Quod eſt fortius [illegible] intereſſe, quod conſideratum in tertia ratione, qualis qualis præiudicii, non eſt dubium, tenere [illegible] quibus conſtat appellationem interpoſitam nomine vniuerſitatum, quia inter cæteros [illegible] eſt ipſorum appellantium ipſas communitates no eſſe ad eum modum condemnatas, & [illegible] appellatio vnius [illegible] poſita nomine ipſius tertii, prodeſt [illegible] appellan[illegible] appellationem proſequenti quando eadem eſt cauſa defenſionis vtriuſq., quanto fortius prodeſt ipſis vniuerſitatibus appellatio interpoſita, earum nomine, per particulares, quorum [illegible] particulariter intererat, & intereſt. Tertio, quod teneat dicta appellatio, adduco text. *in d. l. ex conſenſu.* § *filiusf. in ff. de appel.* vbi filius poteſt appellare pro patre. & dicit Guido Papæ, *queſtio.* 23. quod ſicut poteſt filius appellare, ita & appellationem introducere, nam ſi coniunctus poteſt agere & proſequi pro coniuncto *l. exigendi. C. de procurator.* [illegible] pariter videtur quod poſſit appellare, & cauſam appellationis proſequi [illegible] generalitate illius legis, & identitate rationis, ergo idem videtur in [illegible] quod poſſit appellare pro ſua vniuerſitate *argumento.* [illegible] *ff. de iuſtitia* [illegible] *l. de cur. ff. ad municipal. l. prima. ff. de ventre in poſſeſſion. mittendo.* ¶ Quarto dico, poſito, & non conceſſo, quod appellatum fuiſſet per tertium, aut extraneum, cuius non [illegible] ſine aliquo mandato, adhuc valida eſſet appellatio, etiam quod ratificata non fuerit intra decem dies, quia iſtud tempus ratificandi appellationem non currit, niſi a die ſcientiæ, ex quo dominus ſciuit appellationem interpoſitam, vel grauamen [illegible] tum, ita notabiliter tradit Oldrad. *in conſilio* 20. *Omiſſa prolixitate. colum. penul. in tertio dubio.* nam ſicut tempus appellandi non

[illegible]

... ponde ... ione a apoſtolo ... ratos ... tur ratifie ... ipſ ... in nerel ... ſi atqui per te ... iudi ... in neceſſ ... appella- ſent ... *l. ad obuiam C. de* ... Si autem ... ad ... contra ... ctum pr ... n approbat. Arg. *l. & iam tempore C. quod metus cauſa.* ... qui aliquid petit vigore alicuius teſtamenti, cenſetur ipſum teſtamentum probare *l. ſi pars. § aliud. l. penult. § fin. & leg. fin. ... teſtam.* ... *d. in l. alia ... de bo. poſſeſſ. vt indignis* ... appellationis interpoſi- ... admitt ... quod ei deferretur, & in ... virtute ipſius appellationi: ergo ... non ... ipſa appellatio. ¶ Sed dicet aliquis ... per procuratorem, non per ipſa ... Reſpondeo, quod ... interuenerunt ſyn ... Pro- ... in quo loco, Traxim, dicitur, con- ... nec alios ſyndicos ibi eſſe, quam ... tanquam legitimus admi- niſtrator, & ... habens, cum libera, ſicut poteſt. & ... netur appellare, vt ſupra probatum eſt, ita & appellationem in- terpoſitam ... care, qui enim poteſt actum facere poteſt & ra- tificare, & e contra. qui non poteſt actum gerere, non poteſt ratificare. Bart. *in l. ſi tutor. ante fin. C. in quibus cauſ. in integrum reſtit. non eſt neceſſar.* Paul. de Caſtr. *in conſ.* ... *videtur dicendum, quod dictum ...* ... & pro tecto neſcio videre rationem ... quare non. Tyberga non ita potuerit ratificare appellationem inter poſitam, nomine communitatum, pro quibus ... bat, ſicut poterat, & appellare pro ipſis communitatib. Sed ... aliqu ... tu videris ... fundamen- ... in prioribus allegationibus: nam in prioribus allegationib. ... dictum eſt, quod not. Tiberga non erat procu- rator ... & legitime conſtitutus, & modo ... quod potuerit ... appellationem interpoſitam. Reſpondeo, quod nul- la eſt contrarietas, ſed dico, quod geſta per procuratorem ... legitimum, prodeſſe quidem vniuerſitati, ad cuius vtilitatem per- tinent, ſed ... cere non poſſunt, & ſic iſto caſu iudicium claudi- cat, nec ſeruatur æqualitas. *l. non eo minus. C. de procura.* & licet ille text. loquatur in minore, idem tamen in aliis gaudentibus pri- uilegio minorum, prout in Eccleſia, vt ibi per ... ſed vniuerſitas gaudet iure minoris, & minori æquiparatur *l. ...* ... *reſp.* ... vbi gloſſ. & Doctores ... *C. de iure reipublicæ ... de reſtitutione in integrum. libro 6.* Bart. ... gloſſ. ... tor ... non poſſit, hoc ta- men non procedit in his ... Idem tradit ...

[illegible]

[illegible] quod [illegible] quadam [illegible] col. final. [illegible] 2. ideo Iudex in du[illegible] pronunciat, ap[illegible] [illegible] in [illegible] nt. [illegible] 2. [illegible] D[illegible] [illegible] 1. [illegible] in cap. [illegible] col. 7. de appellat. [illegible] pronunciat Iud[illegible] appellationem [illegible] d[illegible] [illegible] C[illegible] in d.l. 1. ff. ſi quis cauſ. Decius in l. [illegible] [illegible] in dubio pronunciare debet, appellationem interp[illegible] p[illegible] [illegible] & conſiliarios ipſarum vniuerſitatum, [illegible] per ipſos procuratorem, eſſe legitimam & v[illegible] [illegible] [illegible] & [illegible] ponitur quod procurator ipſarum vniuerſitatum, id eſt nōt. Tibergæ erat præſens p[illegible] ſententiæ & appellauit ab ea in [illegible] poſitæ, quod etiam eſt pluſquam veriſimile, [illegible] notarius actorum omiſerit id ſcribere: quo præſuppoſito etiam videtur res ſine dubio, nam cum teneatur procurator appellationem interponere, licet non proſequi, [illegible] præſentium taciturnitas haberet perinde ac ſi ipſe appellaſſet. l. ſi a te. [illegible] ſeruit. vend. Iaſon in l. qua dote colum. 13 in fin. verſ. [illegible] ff. ſoluto matrimon. potuit autem appellare, licet eius mandatum non eſſet legitimum, cum iſtud pertineat ad vtilitatem ipſarum vniuerſitatum. d. l. non eo minus. C. de procuratorib. vt ſupra dictum eſt. ¶ Ex præmiſſis abunde arbitror iuſtificatam & con[illegible]natam cauſam validitatis, appellationis interpoſitæ, quicquid ex diuerſo conetur pars, vt eam infirmet, & alias obtinui, in ſimili cauſa, apud curiam Parlamenti Gratianopolis, in cauſa vniuerſitatis, & hominum S. Andreæ Vallis Benchanæ, contra dominos eiuſdem lo[illegible], nam facta erat quædam executio, in fauorē dominorum, contra ſubditos, pro certis tachis cenſibus & ſeruitiis, à qua executione multi particulares appellauerunt ad curiam Parlamenti, deinde introducta fuit appellatio, ex parte communitatis, dominus Carolus Chamoſſi, aduocatus conſiſtorialis dictæ curiæ, opponebat de nullitate appellationis, prout modo audio opponi, ſed curia Parlamenti proceſſit in cauſa, reiiciendo dictam oppoſitionem, in qua cauſa [illegible] allegauit dictatura, id eſt, l. ſi quis ſeparatim. §. fin. ff. de appellat. l. 1. C. ſi vnus ex plurib. appell. & c. [illegible] de appellat. Sed finge citra præiudicium veritatis, quod non eſſet appellatum, aut nulliter. Adhuc dico, poſſe iudicem appellationis pronunciare, ſuper nullitate, & præſuppono quod nullitas ſententiæ definitiuæ proponi poteſt coram ſuperiore vt habetur in cap. dilecto. de appellat. Baldus in l. [illegible] in princ. C. ſi adu. [illegible] [illegible] conſidero etiam, quod de nullitate cenſe[illegible] principaliter a[illegible]um, quoties de ea fit mentio in cauſa appellationis. Bart. in l. ſi expreſſim. col. 3. ff. de appellat. cuius opinionem late defendit, & dicit veriorem & magis communem. Alexand. in conſil. 2. colum. 3. in fin. & ſequent. lib. 3. & in conſ. 125. col. [illegible] circa medium. lib. 6. Aretin. in conſ. 75. colum. 4. in [illegible]. Socinus in conſ. 10. in fin. lib. 4. Decius in d. c. dilecto circa finem. de appell. Iaſon in l. 1. col. 4. verſ. [illegible] copulam ff. de iuſt[illegible] & iure. & in l. 1. col. 3. verſic. 3. & vltimo limitat. [illegible] de bonor. poſſeſſ. ſecundum tabul. ¶ Hoc ita præſuppoſito, dico, quod Iudex appellationis poteſt & debet cognoſcere de nullitate, coram eo oppoſita, licet appellatio eſſet nulla, quia nullitas appellationis non conſideratur, nec impedit deuolui nullitatem principaliter propoſitam, ſimul cum appellatione: ita Aretin. in d. conſ. 75. col. 4. in fin. verſic. & [illegible] dubio procederet. & licet Aret. ibi loquatur quando quis dicit [illegible] nullam, & ſi qua ſit appellatio, [illegible] tamen, quoties [illegible] mentio de nullitate, vt licet [illegible] [illegible] literis [illegible] ita, & ſatis eſt, quod in cauſa appellationis, [illegible] [illegible]atem quis proſequatur. Bartol. in d. l. ſi expreſſim col. 1. in fin. verſic. [illegible] [illegible] ff. de appell. Alexand. in d. [illegible] conſil. [illegible] col. 3. in fin. & ſequent. lib. 3. & in d. [illegible] conſ. 125. colum. pen. circa medium. ¶ . 5. ſed de nullitate principaliter actum eſt in cauſa appellationis, & in [illegible] ſchedula incipiente, aſſerta ſententia producta die 22. Auguſt. 1545. vbi, quod ſententia, à qua eſt appellatum, dicitur nulla, ipſo iure, & in ſpecie deducūtur cauſæ nullitatis, non paruum multæ. ¶ Et ſi dicatur, in dicta ſchedula non concluſum fuit ſuper nullitate, neq; ſuper ea pronunciatum, ſed tant[illegible] petitum fuit pronunciari bene appellatum & male iudicatum. Reſpōdeo, cum cauſa appellationis deuoluat etiam nullitatem, de qua nihil dictum fit. l. quedam mulier. ff. famil. [illegible] l. fin. ff. de [illegible] patron. [illegible] in l. 1. Cod. quando prouoc. non eſt neceſſ. petendo pronunciari bene appellatum, cenſetur etiam petitum pronunciari ſuper nullitate, de qua dictum fuerat: ſi enim non facta mentione nullitatis, petendo pronunciari ſuper appellatione, cenſetur etiam petitum pronunciari ſuper nullitate incidenter, à fortiori, quando propoſita fuit nullitas, & adductæ cauſæ nullitatis, petendo pronunciari bene appellatum, cenſetur petitum [illegible] nun[illegible] [illegible], etiam ſu[illegible] [illegible] principaliter, de qua [illegible] [illegible] [illegible] fuerat ¶ [illegible] [illegible] poſito & [illegible] [illegible], quod cauſa appel[illegible] [illegible] cauſam nullitatis, tamen ex quo narrata fuit [illegible] [illegible] ipſo iure, et [illegible] in fine ſched[illegible]læ, eſt adiecta clauſula ius & iuſtitiam miniſtrari, virtute illius clauſulæ poteſt & debet iudex pronunciare etiam ſuper narratis tantum, ſuper quibus [illegible] concluſum [illegible] ſpecie non eſſet quia per iſtam clauſulam intelligitur agens dedi[illegible] [illegible] [illegible] omne ius ſibi [illegible] [illegible] quod ex narratis [illegible] poſſit, [illegible] [illegible] bonitate, non com[illegible] concluſum [illegible] [illegible]. vbi [illegible] Calder. Abb. & Doct. [illegible] de ordin. cognit. Ang. [illegible] Are[illegible] §. omnium. col. 7. in princ. & ibi Iaſon col. [illegible] [illegible] Inſtit. de actionib. A[illegible] [illegible] in conſ. 8. colum. 2. lib. 3. vbi Alexand. [illegible] [illegible] [illegible] [illegible] [illegible] concluſum, ſuper quolibet narratorum, [illegible] [illegible] [illegible] [illegible]. Et dicit idem Alexand. in co[illegible] [illegible] [illegible] 4. & qu[illegible] [illegible] [illegible] concluſum, ſuper omnibus n[illegible] [illegible], q[illegible] [illegible] concluſio ſpeci[illegible], tradit etiam Socin. in conſ. [illegible] 9. [illegible] [illegible] medium. verſic. tertio, hoc idem probatur. lib. 2. Imo ſtante [illegible] [illegible] eſt, quod probetur [illegible] [illegible] apta deſi[illegible] [illegible] ex [illegible] [illegible] concluſio ſit inepta: quia [illegible] iſta clauſula omn[illegible] [illegible] [illegible]tudinem concluſioni, dummodo ex narratis [illegible] [illegible] [illegible] [illegible], vt habetur in d. c. cap. 1. de ordin. cogn. Socin. in conſ. 146. col. [illegible] in fine. verſ. ad idem etiam facit. lib. 1. Iaſon in dict. §. omnium. col. [illegible] Inſtit. de actionib. & in l. petens. colum. 3. [illegible] de pact. Itaque cum narrata fuerit nullitas, & ea probata, per plures cauſas, rationes, & ſubiecta clauſula, ius & iuſtitiam miniſtrari, ſine dubio cenſetur concluſum, etiam ſuper nullitate expreſſe narrata, & eo magis ius dici debet, ſuper nullitate, quia concluſio non repugnat nullitati, imo illi adaptatur, nec ineptitudo aliqua in concluſione deprehen[illegible]tur, cum etiam ſtante ineptitudine & diſconuenientia concluſionis, ius reddi debeat ſuper narratorum aptitudine, per ſupra di[illegible], & aliud etiam hic concurrit, quod in appellatione includitur nullita[illegible] vt ſupra dictum eſt. ¶ Ex quibus apparet, quod arguendo, à ſufficienti partium enumeratione, non poteſt non ius reddi ſuper nullitate, & iniquitate euidenti aſſ[illegible] [illegible] ſententiæ. Sed pone citra præiudicium veritatis, quod nullitas proponi hic non poſſet per actores, dico, quod ſaltem iudex ex officio deberet ſuper ea ſupplere, nec exequi debet iudex ſententiam nullam. Bald. in conſil. 21. proceſſus. lib. 5. Anchar. in conſil. 208. Iudex de iure. colum. 3. circa princ. verſ. ſtatuitur autem. Alex. in conſ. 77. col. 4. poſt med. verſ. ſecundo reſpondeo. lib. 5. Et ita de iure reſpondeo, ſaluo ſaniori iudicio. Saulhans die 19. Februar. 1546. Aymo Crauetta, ex Saul. I. V. D.

SVMMARIA.

1. *Quando conſiderari poſſit vitium litigioſi, ſuper poſſeſſorio?*
2. *Error iuris dici [illegible] ſeparatur errori facti, & cauſas bonam fidem, quo ad præſcribendum.*
3. *Quando contrauenitur intrumento poſſitiuo, contrauentione non incidit in pœnam, [illegible] palam. ſit.*
4. *Quibus [illegible] competat probatio dominii?*
5. *Cum eſt concluſum in poſſeſſorio, non poteſt haberi ratio alicuius petitorii.*

CONSILIVM CCLXXIX.

Pro Nicolao Lerde, notario & cauſidico Coſtiglioliarum, contra fiſcum dicti loci.

DIVINO ſubſidio ex corde poſtulato. Scripſi alias pro Nicolao Lerde, cauſidico Coſtiglioliarum, quod vitium litigioſi non commiſit, permutando bona cum Maria, vxore Antonii Martinæ. ſed poſtea ſcriptum fuit in fauorem fiſci, per alios dominos aduocatos, quorum ſcripta tamen nihil me retrahunt à priori ſententia: & primo conſidero, quod dicta Maria primo propoſuit interdi[illegible] [illegible] adipiſcendæ, poſtea obtinuit reſcriptum [illegible] tendens ad actionem perſonalem, quam etiam actionem perſonalem neceſſario præſupponunt interrogatoria agent[illegible], contra conuentos, an ſint heredes dicti Antonii Martinæ, quæ interrogatoria ſunt inepta in poſſeſſorio, & ſolum poſſunt re[illegible] ad actionem perſonalem, vt ſoluere teneantur dote[illegible], tanquam heredes. H[illegible] ita præſuppoſito quod ſit receſſum à poſſeſſorio, & actio perſonalis † intentata, non poteſt conſiderari vitium litigioſi ſuper poſſeſſorio extincto à quo receſſum fuit, ideo litigioſ[illegible] dici non poteſt, quando fuit renunciatum cauſæ, liti & inſtantiæ. Bartolus & Doctor. in l. cum mota. C. de tranſact. Decius in l. 2. colum. 11. C. de edend. Eadem ra- 1

[illegible] *Corvinum* [illegible] *Cod. ne lucat* [illegible] [illegible] ſamſeſſe [illegible] dico, quod per [illegible] ſamtem, vt alienari, [illegible] *eodem* [illegible] ſequitur [illegible] o Papæ, *quæſt.* 317. [illegible] magis [illegible] ceditur ab actione intentata. [illegible] fundamentũ partis, quod licet [illegible] perſonalis, tamen [illegible] ipſa eſt [illegible] nunc [illegible] communem, in fauorem [illegible] ſunt potius [illegible] ete Docto. oporteat contra aliquem [illegible] de natura [illegible], & vbi reſpublica non læditur [illegible] his quæ ſunt de genere prohibitorũ, *mixta l. non pacto ff. de iure* [illegible] [illegible] non perperam [illegible] plus in ſuis conſiliis [illegible] communes, veras & æquiſſimas ſententias, vt planius [illegible] ndo oſtendemus. Quod autem in actione perſonali, [illegible] litigioſa non fiat, ſed ſolum ipſa actio [illegible] conteſtata [illegible] partibus, adducitur tex. *in l. 1. ff. de litigio. l. 2. C. eod. tit.* [illegible] vbi Bald. *C. communi diuidun. l. 1. C. de præſcript. longi tempor.* Innoc. *in cap. cum M. de conſtit. & in capit. dilecta de except.* Bart. *in conſil.* 4. [illegible] *conſ.* 33 [illegible] Rom. *in conſil.* 28 [illegible] *Pro deciſione in ſecundo dubio* [illegible] *in prima parte ſui repertorii in verbo Alienatio verſic.* 199 [illegible] *pragmatica in tit.* [illegible] *in verbo, hoc caſu* Bart. 137. [illegible] voluit Guido Papæ, *quæſt.* 4 [illegible] quod [illegible] actione perſonali, nec res nec actio vtilis, [illegible] litigioſa [illegible] tum actio [illegible] ecta & hanc opinionem quod in actione perſonali non efficiatur res litigioſa, dicit communem Felin. *in c. dilecto col. penult. in fin. de except.* & licet videatur Fel. [illegible] genere contrarium, tamen propter eum à commun opin non videtur recedendum. Et vbi quis vellet tenere contra communem, illud poſſet procedere, quo ad alios effectus reſultantes ex vitio litigioſi, non reſpectu pœnæ. ¶ Sed poſito, citra præiudicium veritatis, quod ſuſtineri poſſet opinio, quod in actione perſonali res fiat litigioſa, tamen negari non poteſt, quin articulus iuris ſit dubius, quo caſu † error iuris dubii, dicitur probabilis & æquiparatur errori facti, & [illegible] bon in fidem, etiam quo ad præſcribendum. *l. Cel. in ff. de vſucap. cap. cum dilectus.* [illegible] *l. nol* [illegible] *ff. de rebus dub.* [illegible] error iuris dubii [illegible] obicum prodeſt ad ſcribendum & acquirendum multo magis prodeſſe debet, vt excuſet quis à pœna. ¶ Conſidero etiam, quod contrahere ſuper re litigioſa non eſt prohibitum, de iure diuino, naturali, aut gentium, ſeu tantum de iure Cęſareo, & mere poſitiuo quo caſu † quando contrauenitur iuri mere poſitiuo, contrauenien[illegible] non incidit in pœnam, tractas palam [illegible] *l. fin. ff. de* [illegible] per quem textum ita decidit Bart. *in l. ſi adulterium* [illegible] *ff. de adulter.* [illegible] Bald. *in conſ.* [illegible] 9. *Verba matrimon.* [illegible] Bald. [illegible] *quod licet ignorantia* ſed [illegible] contractus permutationis celebratus fuit palam, & publice, & bona fide, ergo pœnæ locus eſſe non debet. [illegible] poſito etiam ſine præiudicio veritatis, quod non eſſet [illegible] primo [illegible] poſſeſſorio, [illegible] ipſi, qui [illegible] poſſeſſio non eſſet [illegible] res litigioſa [illegible] poſſeſſio tantum [illegible] habetur [illegible] ¶ Sed obiicitur ex ad[illegible], quod iſtud poſſeſſorium adipiſcendæ [illegible] naturam proprietatis, propter productorium [illegible] *quadam ff.* [illegible] vbi [illegible] in quo [illegible] dominium [illegible] habere [illegible] propter [illegible] ¶ S[illegible] reſpondet ad obiectum, negando quod ad probationem [illegible] [illegible] ſequitur, agens [illegible] [illegible] dominium [illegible] thoris, qui [illegible]

[illegible]

2 [illegible]

3 [illegible]

4 [illegible]

[illegible] *ſo* [illegible] ſunt [illegible] dum [illegible] habere [illegible] Dominus [illegible] compenſatio [illegible] in dubio, [illegible] cus, vt e[illegible] pœna caduc[illegible] & [illegible] *confirm. de rebus* [illegible] non [illegible] ¶ In quibus [illegible] noſtri [illegible] Sauthame [illegible] Iuris [illegible] D[illegible]

SVMMARIA

1 *Quando vna cauſa dicatur præiudicialis ad alteram.*
2 *Cauſa* [illegible] *ad* [illegible]
3 *Quando* [illegible] *criminalis* [illegible] *ponatur* [illegible]

CONSILIVM CCLXXX

Pro hominibus Arpeaſchi Marchionatus Saluciarum contra [illegible] *Marchionalem.*

D[illegible] ex corde poſtulat. Inquiet [illegible] particulares Arpeaſchi, Marchionatus Saluciarum [illegible] minum [illegible] Marchionalem, q[illegible] mas [illegible] Præpoſito [illegible] A[illegible] peat[illegible] nem [illegible] partis, in quibus [illegible] ob etiam ex[illegible] Marchionalis, ipſi particulares opp[illegible] non eſſe procedendum contra eos criminaliter, quia ipſi quam [illegible] neque recuſant decimas [illegible] ſe [illegible] ſed non ad eam quotam, petunt [illegible] in qua ſunt parati docere de eorum [illegible] decimas, ad minorem quotam, que [illegible] ¶ [illegible] ad partes, puto non poſſe [illegible] criminaliter, ſed ciuiliter prius agendum eſſe, tanquam [illegible] cauſa præiudicialis ita ad criminalem. † & conſid[illegible] fundamento [illegible] quod vna cauſa dicitur præiudicialis ad alte[illegible] ratione excl[illegible] exclutiua alterius, & ſen[illegible] lata in [illegible] præiudicium in altera, puta agit quis [illegible] quam [illegible] petit [illegible] hereditatis, opponitur ei qu[illegible] [illegible] quod priuandus veni[illegible] [illegible] a prohibitione teſta[illegible] [illegible] petitionis hereditatis, ratione indicatabilitatis, quia [illegible] prohibitione teſtandi, [illegible] [illegible] *qui aliq teſtar.* [illegible] [illegible] agens petitione hereditatis, moueatur quæſtio [illegible] [illegible] & [illegible] *Liberatam ff. d.* [illegible] [illegible] teſtes [illegible] cauſam [illegible] le, in con[illegible] [illegible] *Cod. de fide inſtrum.* [illegible] [illegible] ad [illegible]

[illegible] eſeparandam, [illegible] ſtra [illegible] de [illegible] Rurſ [illegible] ſta [illegible] biteri, [illegible] cauſa ſtatus, tanquam [illegible] natur liber [illegible] *Lenam ſtatu. C. de ordin. cog.* Simili modo [illegible] pe[illegible]um de adulterio commiſſo cum [illegible] ex[illegible] exciptat de [illegible] [illegible] quod accu[illegible] [illegible] quod excep[illegible] nem [illegible] obiicere non poteſt, prius cognoſcendum [illegible] ſtata [illegible] incidenter mota, per rep[illegible] præiudicialitam, quia ſi pronunciet [illegible] ſtatu ſeruum [illegible], fruſtra diſputaretur de lenocinio, quod [illegible] ſeruo [illegible] poteſt *l. quoniam Alexandrum C. de adulter.* Æque ſi agatur [illegible] plagiarium, quod ſeruum [illegible], & reus accuſatus dicat, ſeruum [illegible] ſati, prius cognoſcendum eſt de dominio [illegible] ne plagii, † quia cauſa dominii eſt præiudicialis [illegible] plagii criminis, quod [illegible] in re propria. *l. præſes. C. ad l. Fabiam de plagiar.* ¶ Ex quibus iuribus probatur, quod ſi cauſa criminalis ſit præiudicialis ad ciuilem prius cognoſcitur de cauſa criminali & interim ſuperſedetur in ciuili, & ſi cauſa ciuilis eſt præiudicialis ad criminalem, prius tractanda eſt cauſa ciuilis, & interea ſuperſedendum in criminali. ¶ Idem ſi vtraque cauſa ſit [illegible] criminalis, quia de præiudiciali prius ſemper cognoſcitur, & illa prius [illegible] debet, & in cauſa ciuili præiudiciali ad criminalem, quod ſilere faciat ipſam cauſam criminalem, lo[illegible] dicta duo iura *in l. præſ. [illegible] de plagiar. & in l. quoniam Alexandrum. C. de adulter.* Et quod cauſa criminalis ante omnia diſcuti debeat, tradit Ang. *in cons. 162* duplici reſpectu. ¶ [illegible] prius cognoſci debet de cauſa præiudiciali, ſiue illa principaliter moueatur, ſiue per modum incidentis, aut emergentis, quod ſi aliter fiat, ſententia redditur nulla. Bald. *in conſil. 75. præmiſſo [illegible]* Paul. de Caſt. *in conſil. 18 [illegible] colum.* [illegible] lib. 1. [illegible] ita præmiſſis & præſuppoſitis, dico, quod ex [illegible] ita per iſtos particulares Arpeatchi, contra [illegible] [illegible] deſiderium, dicunt omnino præiudicialis ad [illegible], & eam excludit neceſſario, etenim ſi pronunciatum non deberi decimas ad rationem trigeſimæ, ſed ad qua[illegible] per inquiſitos, aut reos, fruſtra [illegible] de [illegible], quod non ſoluerint decimas ad quotam trigeſimæ ex quo ad illam quotam non tenentur. Itaque cum exceptio [illegible] contra fiſci querelam, notorie ſit præiudicialis ad ipſam querelam, vtique talem querelam ſilere omnino oportet, & in ea debet ſuperſederi donec cognita & deſinita ſit quæſtio ciuilis, ad quam quotam decimæ debeantur. Et [illegible] quæſtio [illegible] & [illegible] apertè decidi videntur, per tex. *[illegible] l. præſ. C. ad l. Fab. de plag. & [illegible] l. quoniam Alexandrum. C. de adulter.* [illegible] quæſtio ciuilis præiudicialis, ad criminalem opp[illegible], per viam exceptionis, [illegible] vero [illegible] quoniam Alexandrum per modum replicationis, & [illegible] ſilere [illegible] criminalem. ¶ Facit ad [illegible] quod Bald. ſcribit *in conſil. [illegible] ad [illegible] præmittendum, quod quand. [illegible]* [illegible] emphyteuſia, [illegible] in poſſeſſione, conſtare debeat, quod [illegible] emphyteutica, & qui [illegible] dominus. In propoſito noſtro antequam agatur [illegible] criminaliter contra aliquos, [illegible] decimas non ſoluerint ad certam quotam, conſtare prius debet de cauſa ciuili, [illegible] quod debeantur decimæ ad eam quotam, [illegible] ſilere op[illegible] criminalem, & citationes [illegible] non debent. ¶ Ad idem adduco quod ſcribit Bartol. *in conſil. 113. proceſſum eſt.* vbi, quia actio rerum amotarum non datur, niſi contra illam, quæ vxor fuit, conſtare prius debet, quod eſſet vxor, *per l. conubium in prin. ff. rerum amotarum.* Eodem modo cum delictum conſiderari non poſſit in particularibus Arpeatchi [illegible] non ſoluas ad rationem trigeſimæ par[illegible], [illegible] debeantur ad eam quotam, conſtare prius debet, quod debeantur ad eam rationem: iſta autem quæſtio, ad quam rationem aut quotam debeantur, non pertinet ad cauſam criminalem, ſed ciuilem, ob id ciuiliter prius omnibus agendum eſt. ¶ Ad idem adduco quod tradit [illegible] Bartol. *in conſilio 185. Dec [illegible]* vbi, quando quis [illegible] criminaliter [illegible] tione [illegible], ita quod [illegible] conſtare prius debet de

[illegible] conſtare non cogeret [illegible] *[illegible] imperium lib. 6.* Eodem [illegible] [illegible] ad quot [illegible] ſidem [illegible] [illegible] debet decimas ad eam [illegible]. Et [illegible] ponere [illegible] ſufficere. Ad idem adduco quod ſcribit Bal. [illegible] vbi quando agitur de pœna [illegible] prius declarari [illegible] quod petitur [illegible], ſi debitum vel non [illegible] decimas non ſoluta [illegible] prius debet [illegible] ad [illegible] prætenſam, [illegible] criminali. § [illegible] ſæpe [illegible] ſpondi [illegible] poſſeſſione, q[illegible] quando dicunt ſe [illegible] [illegible] puta [illegible] Arpeatchi [illegible] ſoluendi decimas [illegible] partes, [illegible] ſi [illegible] eſt [illegible] procuratorem [illegible] ipſi omnino [illegible] exiſtimant. Sed finge [illegible] [illegible] ceſſarent, quæ [illegible] gentes [illegible], non poſſe procedi criminaliter [illegible] ſoluentes decimas, quia delictum conſiderari poteſt, quando [illegible] decimas eſſe ſoluendas ſimpliciter & abſolute [illegible] vitam, clericorum, nam talis negatio ad [illegible] [illegible]. Io. de Anania *in cap. præterea col. [illegible] de hæreticis.* ſequitur D[illegible] *in cap. [illegible] colum. [illegible] verſ. in quarto caſ. [illegible] de offic. delegatorum.* Sed quando quis non negat ſoluendas eſſe decimas, imo eas ſoluit, ſed ad [illegible] quotam ad quam prætendit ſe teneri, & non [illegible] amplius ſoluere, talis [illegible] ad crimen [illegible], cum [illegible] conſuetudo ſuper quota decimarum, vt habetur *in cap. in aliquibus. de decimis. & in cap. [illegible] de tran[illegible] actio.* Catain. *in conſilio 46.* *[illegible] Felin. in c. [illegible] colum. [illegible] de præſcript.* Similiter valet conſuetudo circa res, de quibus ſolui [illegible] debent, ita quod non ſoluatur de omnibus, de quibus ſolui deberet [illegible] commun[illegible] Paul. de Caſt. *in conſil. 19. In cauſa decimalis col. [illegible] lib.* Itaque, ſi valet conſuetudo circa quotam decimarum, non poſſunt non excuſari ſoluentes ad formam ipſius conſuetudinis, [illegible] conſuetudo [illegible] & [illegible] excuſet à pœna. gloſſ. & Doct. *in cap. cum ven. [illegible] de con[illegible] glo[illegible] in cap. denique in verſicul. conſuetudine. 4. diſt.* ¶ Imo non ſolum conſuetudo antiqua aut præſcripta excuſat à pœna, ſed etiam ſola poſſeſſio ſeu quaſi excuſat à crimine, accedente bona fide, puta inquirunt contra aliquem, quod exercet iura regalia, ſine titulo colligendo pedagium vel paſſagium, [illegible] quintus ſit in quaſi poſſeſſione ita [illegible] cum bona fide, quia ſucceſſit in locum alterius, qui exercebat, puniri non debet, ſed illud ſolum per iudicem cognoſci debet, an ei competat tale ius colligendi pedagium vel paſſagium vel non. Baldus *in conſil. 28 [illegible] conſuetudo colum. 2. lib.* Sed [illegible] particulares Arpeatchi ſunt in quaſi poſſeſſione ſoluendi decimas vini, prout ipſi contendunt, in qua ipſa etiam poſſeſſione authores eorum inuenerunt, & ſecum bona fide, ergo criminaliter contra eos procedi non debet, nec poteſt, ſed illud tantum ciuiliter videndum eſt, an releuet eos talis poſſeſſio, ſeu quaſi: quod ipſum, vltra iuris rationes, ab ipſa etiam naturali æquitate abhorrens non videtur. ¶ Poſtremo conſidero, & in omnem euentum, quod licet dominus Præpoſitus Arpeatchi eſſet in poſſeſſione, ſeu quaſi percipiendi decimas, ad votum eius, non propterea criminaliter inquietari debent non ſoluentes decimas ad quotam petitam, ſed ciuiliter contra eos agendum eſt, vt ſoluant, nam actio criminalis ceſſat, quoties actione ex contractu aut aliàs ciuiliter agi poteſt. Bal. *in conſil. 15. Ad euidentiam [illegible] vbi* quod actio de dolo ceſſat, vbi non [illegible] purgari dolus poteſt [illegible] actione ex contractu. *l. [illegible] in princip. ff. de dolo.* idem tradit Paulus [illegible] *in conſil. 411. [illegible] colum. [illegible]* Sed dolus non ſoluentium decimas ad quotam petitam, [illegible] purgari poteſt, quam per actionem criminalem, quia cogi poſſunt parochiani ad ſolutionem decimarum [illegible] viam excommunicationis. *cap. [illegible] de decimis [illegible]*

[illegible] non [illegible] ſequitur, quod pro [illegible] debiti [illegible] demum in his, quæ [illegible] ſolum ſunt prohibita omni iure, prout [illegible] fornicati, & cætera id [illegible], in quibus nulla [illegible] in his quæ de ſui natura non [illegible] prohibitionem, prout eſt dicere [illegible] non tene[illegible] ad qu[illegible] naturam [illegible], ſed ad aliam [illegible] num non eſt d[illegible] prohibitorum, imo permiſſiorum. ¶ Conſidero etiam [illegible] nulla lex [illegible] dicat §. *cum igitur* [illegible] *auth. de non* [illegible] Abb. *de iure patron.* [illegible] *penult. C. de tranſa.* [illegible] *l. illam. C. de coll.* [illegible] non eſt [illegible] & contra [illegible] ſcemine [illegible] *l. cuius ff. de cod.* [illegible], Bald. [illegible] *lib.* [illegible] contra loquentem [illegible] *conſil. 84.* [illegible] *lib.* vbi clamat [illegible] *lib.* cœlo, quæ [illegible] ibidem Bald. *in conſ. 41 lib. 5. & in conſ. 440.* [illegible] quoque qui legem allegat, [illegible] probare, [illegible] fundet in affirmatiua ſiue in negatiua. Ideo vellem oſtendi legem ciuilem aut canonicam, qua ipſa cautum ſit pro [illegible] criminal[illegible] contra non negantes decimas, neq; eam ſolutionem recuſantes, ſed tantum contendentes [illegible] ad quotam [illegible], & volentes probare de [illegible] in [illegible] ciuili. Et [illegible] debet princeps [illegible] nullius [illegible] optimi, dicentum, quod [illegible] fitſi oc[illegible] neceſſe eſt, reliqua reipublicæ, ſicut corporis humani marceſcant & putreſcant & contabeſcant. nihil dicere [illegible] quod tuuat [illegible] quod dictum [illegible] & commendat Plinius [illegible] *nouo* [illegible] conclu[illegible] non eſſe locum [illegible] habin hac [illegible] ſaluo ſemper [illegible] *conſ. 17. col. 2. in fin.* vult [illegible] decimarum, & ob id non ſoluentes [illegible] contra præceptum diuinum, [illegible] de iure diuino, quod dictum videtur procedere [illegible] nulla allegata excuſatione non ſoluendi. Aymo Crauetta, [illegible] I. V. D.

SVMMARIA.

1 [illegible]
2 [illegible]
3 [illegible]
4 [illegible]
5 [illegible]

CONSILIVM CCLXXI.

[illegible] *contra Bertrinam* [illegible] *matrimoniale* [illegible]

D[illegible]

[illegible] Abb. [illegible] ſen[illegible] do[illegible] ſupp[illegible] [illegible] *gent* [illegible] & in matrim[illegible] re, videtur [illegible] *in cap.* [illegible] *porro* [illegible] tat Alexan[illegible] ſuppoſito [illegible] pet[illegible] videtur [illegible] Gnglati confeſſio [illegible] eſt dubium, qu[illegible] vnum teſtem, nd[illegible] nam p[illegible] [illegible] *medium* [illegible] *& in* [illegible] *medium* [illegible] Alex. [illegible] *conſil. 188. column. 4.* [illegible] Ioan. [illegible] *monach. column. 38 ff. de iureiurando.* ¶ [illegible] confe[illegible] [illegible] parte [illegible] in Gnglati, abſente parte, probata [illegible] quæ [illegible] abſente parte, [illegible] inducit præſumptionem aut indi[illegible] Alex. [illegible] *de malo* [illegible] *lib. 4.* Imo † in cauſa matrimoniali [illegible] ſpirituali ita probari videtur confeſſio, abſente parte [illegible] te præſente. Felinus in *cap. ſi cautio column. 7. ſecunda fallentia* [illegible] ſequitur Decius *conſ. 163. column. 1.* [illegible] *fol. 165. column 4.* Et [illegible] matrimoniu[illegible] per[illegible] [illegible] ationes ſemper [illegible] videntur [illegible] endum vnam plena[illegible] & Doctor[illegible] *in l. admon.* [illegible] *iurando* ſaltem [illegible] non po[illegible] tionum pluſquam [illegible], quo caſu [illegible] ſtrumento [illegible] non obſtante [illegible] *in cap. multi. de iureiurando* [illegible] *iureiurando.* & ideo [illegible] *conſ. 112. & in conſ.* [illegible] ¶ Sed præmiſſ[illegible] contrarium puto [illegible], quod imo [illegible] matrimonium [illegible] & [illegible] fundamento [illegible] conſidero, quod ad hæc [illegible] ſemiplenam prob[illegible], oportet [illegible] Bartol. [illegible] ibi Iaſon [illegible] *conſil. 5* [illegible]

[illegible] m [illegible] ad [illegible] da [illegible] tinam, cum [illegible] d [illegible] Bertulinæ. ¶ Similiter [illegible] ad [illegible] C [illegible] Be[illegible] ad [illegible] d [illegible] in Be[illegible] ad [illegible] habitaſſet [illegible] hinæ [illegible] bona [illegible] bus & verbis [illegible] probatur quam v[illegible] cta et & [illegible] ſeruit ex alio [illegible] audiuiſſe a Mauritio Rebuti, [illegible] Michael [illegible] dictis Griglatti [illegible] Meli ca, dimiſit [illegible] de adhuc iuuenis [illegible] dicti Certum vo[illegible] co operimperium [illegible] do ipſo ne [illegible] mane dicti [illegible] Be[illegible] matrimonium [illegible] non in [illegible] Rebuti [illegible] iſta [illegible] affect [illegible] Melic[illegible] Mauritium Rebuti, du[illegible] ipſum M[illegible]am d[illegible]

4 chae Bellinæ quidquid velit [illegible] ſed [illegible] tes, teſtis non d[illegible] omnie [illegible] ſpectus, quod rep[illegible] in toto [illegible] *tur in fin quæ matrim acc. conſ.* [illegible] *colum* [illegible] aut mulium [illegible] rep[illegible] c[illegible] alio [illegible] præſumpt [illegible] teſtem [illegible] preſſa, d[illegible] quævero [illegible] veritas ſit [illegible] præſumpt [illegible] *ff. quod metus cauſa* [illegible] bet quod teſtis [illegible] depoiut, repelli [illegible] lute Anch. [illegible] *corroboratur* [illegible] Alexan. [illegible] *mediatum ver.* [illegible] *colum* [illegible] *versi* [illegible] Idcirco ratione affectionis repellitur [illegible] nomo aduocatus & procurator, licet cauſ[illegible] principalis adeo non [illegible] nec commodum ſperent. gloſſ. & Bar. [illegible] *ad decreuerunt. ff. de iure fiſci.* Bart. in [illegible] *de teſtibus* [illegible] qui fuit procurator in ca[illegible] principali non poteſt [illegible] in cauſa [illegible] ratione [illegible] affe[illegible] ctione [illegible] *Rom. de teſtibus.* [illegible] & Doct. *in cap. inſuper. de teſtibus.* & de aduocato, qui [illegible] appellatur [illegible] gloſſ. [illegible] *ſtatuendum in verſu cognitor.* [illegible] ratio [illegible] pellitur pro[illegible] etiam [illegible] pt [illegible] Innoc. & Do[illegible] *in cap. dilecto* [illegible] Alex. *in conſ.* [illegible] *libr. 1.* N[illegible] dicatur admi[illegible] teſtem [illegible] fau[illegible] rentia [illegible] teſtem [illegible] criminalibus [illegible] Oldrad. *in conſil* [illegible] *Regula* [illegible] hæreticus, in quo teſtis repe[illegible] propter affect[illegible] matrimonij tradit Abb. [illegible] *videtur* [illegible] Alex. *in conſil. 153. col. 2.* [illegible] *in conſil. 133. colum. 3.* [illegible] *colum. 2. in princip.* Addo Alex. *in conſ. 13* [illegible] ¶ Sed [illegible] ſtra affectionem p[illegible] ex [illegible] ex dicto illius Mauritii Rebuti, probat[illegible] clariſſime & [illegible] efficaciter affectio illius teſt[illegible], quia [illegible] cauſæ, pro-

5 ut teſtes ipſius Griglatti cla[illegible] depoſuerunt [illegible] ſollicitator etiam repellitur propter affectionem. Imola *in conſ. 135. colum. 2.* vbi loquitur etiam in non [illegible] tradit Rota *decis. 114 in nouis.* in cauſa matrimoniali, quod ſollicitator [illegible] pellatur, tradit Alex. *in dict. conſ. 153. colum. 2. in fin.* [illegible] *154 colum. 1. eodem libr. 5.* Decius *in dict. conſ. 133 colum. 1. in fin.* [illegible] *in dict. conſ. 31. colum. 2.* Ex quibus apparet dictum illius teſtis nihil omnino probare ratione ſuſpitioni[illegible] ex eius affe[illegible] procedentis. ¶ Non etiam probat Mau[illegible] Rebuti, quia laborat eodem morbo affectionis, tam [illegible] tione [illegible], quam [illegible] verbis per eum prolatis, de [illegible] ipſius Griglati, [illegible] Præte[illegible] pluribus variat [illegible], quæ depoſuit Anton. Meli-

a, [illegible] nderetum fuit per domino[illegible] patronos cauſæ. Ay[illegible] Martinum & Aymarum de Bagnolis. ¶ Secundo [illegible] ſpe[illegible] illos teſte[illegible] non depoſuit [illegible] Griglati [illegible] au[illegible] [illegible] quod [illegible] quod [illegible] præ[illegible] ſt [illegible] prope [illegible], & tamen non [illegible] aut [illegible] dicat, qui [illegible] de [illegible] præſente & a[illegible] ſent a cu[illegible] & tamen non [illegible] ſe velad [illegible] *§ fin. vbi* B[illegible] *authen.* [illegible] Bald. & [illegible] *2. § fin.* [illegible] *in princ. ff. de teſtam.* [illegible] *in princ. ver.* [illegible] *& licet* [illegible] *verſic. prætorea non apparet. libr. 3.* & [illegible] quo Anton. Meli[illegible] [illegible] no[illegible] et audu[illegible] Mauri[illegible] aut [illegible] Re[illegible] talia [illegible] in exitu [illegible] quo [illegible] & hæc [illegible] T[illegible] in hæc illi teſtes [illegible] ponunt [illegible] nam [illegible] buti depoſuit de confeſſione Ber[illegible] in [illegible] Melic[illegible] de qua Melic[illegible] non depo[illegible] [illegible] ile eſt quod Melica tantopere affecta natu[illegible] confeſſionem depo[illegible], vt eam ge[illegible] matam redderet. [illegible] e dictum iſtorum teſtium, quaſi Bert[illegible] licentei pſi Griglati, plus quam verſimile [illegible] affect[illegible] aut [illegible] [illegible] matrimonij aut

6 [illegible] illorum teſtium [illegible] non debet tanquam ſuſpectum [illegible] *cap.* [illegible] *ſimile circa* [illegible] *quæ contra* [illegible] Imola *in* [illegible] *4. in pri.* De[illegible] *in cap. lic* [illegible] *de prob.* [illegible] *conſil.* [illegible] *extremum* [illegible] ¶ Quarto reſpondeo poſito & non conce[illegible] præ[illegible] eſſet tali confeſſioni Bertulina & [illegible] non ſequitur, ergo perinde eſt ac [illegible] quia aliud eſt [illegible] aliud con[illegible] *ff. de verbor. ſignif.* putuit enim [illegible] ad effectum, vt cum vnica facilius [illegible]. Et ſic iſta probatio non concludit, contendo [illegible] confiterer, ergo ego confeſſus ſum, vel [illegible]. ¶ Similiter non obſtat teſtimonium Anton. Rebuti [illegible] de quadam confeſſione extra[illegible], quæ [illegible] probat etiam in cauſa matrimoniali, vt per Alex. *in d. conſil. 154. colum. pen. libr. 5.* idem tenet Paul. de Caſtro *in conſil.* [illegible] *quæ vertitur coram domino Vicario colum. 1. in fin. verſu 2.* [illegible] *libr. 2.* ¶ Nec obſtat quod probat [illegible] confeſſio de æquitate canonica [illegible] parte, quia in contr[illegible] di[illegible] teſſe commune[illegible] opinionem. Alex. *in conſ. 180 colum. 3. lib. 2.* vbi etiam dicit quod [illegible] poſſet procedere in foro pœnitentiali aut ſpirituali puta, quando ageretur per viam denunciationis Euangelicæ. ¶ Secundo reſpondeo, & hic diligenter aduertatur, quod iſte Grig[illegible] matrimonium cum [illegible] contraxit, & hic agitur de infringendo matrimonium aliud, quo caſu, cauſa matrimonialis æquiparatur cauſæ criminali, nec iſto caſu admittuntur teſtes, coniuncti ad probationem matrimonii, qui alias admitterentur, data paritate viri & mulieris *cap. 1.* vbi Anton. de But. *de conſang. & affinit.* Alexand. *in conſil. 144. colum. 2. verſu præterea etiam lib. 2.* Socin. *in conſil 17. colum. 4. verſic. quinimo vult Bart. de Sa[illegible] lib. 1.* Dec. *in conſil. 113. colum. 2.* & iſto caſu procedit d[illegible] Veron. *in conſil. 2. colum. 1.* [illegible] *verſicul. 4.* [illegible] *ſumptus.* vbi quod teſtes, in probando matrimonio [illegible] exceptione maiores: hoc ita præſuppoſito, quia [illegible] matrimonialis æquiparetur [illegible] minali: dico quod in cauſa criminali confeſſio extraiudicialis a[illegible] probat. [illegible] de æquitate canonica. *cap. quam ſit grauis.* [illegible] Alexand. *in dict. conſ. 180 colum. 3. verſic. item dato.* [illegible] in cauſa criminali iſte teſtis, Anton. Rebuti non [illegible] minorantia in agendo communiquintus [illegible] *ff. de* [illegible] Oldrad. *in conſil.* [illegible] *col. 2 circa med.* A[illegible] *conſil. 76 libr. 1.* ¶ Nec dicatur [illegible] con[illegible] debere, & defectus ipſe [illegible] pe[illegible] ſuppl[illegible] quia ex [illegible] omnes ſunt defectuoſi [illegible] non poteſt vnus defectuoſus alium etiam defectuoſum iuuare [illegible]

[illegible] quandi [illegible] Alex. nd. in cons. 157. colum. penult. [illegible] in consil. 71. [illegible] lib. 7. Cornel. in consil. 33 [illegible] versicul. item sunt multi ibi non autem dico lib. [illegible] quod [illegible] procedit in causa graui & ardua, in qua numerus [illegible] non supplet licet testes num [illegible] ellantur. Bal [illegible] cap. ad nostram de testibus. Iason in l. praetor. § cogetur colum. 2 ff. de e[illegible]. ¶ Secundo respondeo, quod hic tractatur non posse [illegible] plene, cum illi testes non deponant de eodem actu, sed diuerso, ideoque potest vnus testis supplere [illegible] in alterum [illegible], circa [illegible] testionem, de qua testis ipse supplens nihil loquitur, illo enim casu vbi testes diuersa dicunt, tractatur de coniunctione probationum, an coniungi debeant, potius quam de [illegible] suppletione. ¶ Similiter non possunt coniungi testimonia [illegible], ex quo singula de per se sunt omnino imperfecta [illegible] vnumquodque per se nihil potest operari l. si ff. ad [illegible] § qui non a multa ff. de excusa. tut. [illegible] Bal. in l. si quis ex argentar. [illegible] ff. de eden. Plura enim imperfecta vnum perfectum [illegible] non possunt, sicut plures caeci videntem non [illegible] clandi vnum [illegible] cap. ex tenore [illegible] de fide instrum. capit. [illegible] de poenit. dist. 2. quae iura ad hoc citat Cal[illegible] in consil. [illegible] & in probat[illegible] imperfectis, quae non coniunguntur, [illegible] Bald. in l. si quis ex argentarius § 1. ff. de eden. vbi quando fama non est bene probata, nunquam coniungitur cum vno teste, deponente de veritate, ita dicunt Doctor. in d. l. admonendi. vbi Iason column. 89. Decius in consil. 57 column. 3. fin. versicul. non ob. quod vnus testis. ¶ Non obst. quod hic agitur de matrimonio clandestino, in quo probationes leuiores videntur sufficere. l. consensu C. de repud. Bartolus in l. si quis ex argentarius. § penult. ff. de eden. Calde. in consil. 4. tit. de praesumpt. [illegible] quia illud procedit in his, quae de sui natura sunt difficilis probationis, secus quando difficultas probationis procedit facto & culpa partis quae poterat [illegible] adhibere, prout in matrimonio, quod publice contrahi potest & debet, ita in terminis matrimonii clandestini respondet Alexand. in. [illegible] cons. 152. column. 3. post med. [illegible] lib. 4. Socin. in d. consil. 17. colum. 2. versicul. [illegible] Dec[illegible] consil. [illegible] colum. fin. versic. vltimo non obst. & in d. consil. [illegible] colum. [illegible] vers. [illegible] in isto casu Non obst. quod in tertio [illegible] alterum videtur probata plus quam semiplene ob id quod locus videtur iuramento suppletiuo etiam in causa matrimoniali, vt per Alexandrum & Moder. in leg. 3. in princ. ff. de rerum [illegible] Bald. in consil. 12. & in cons. sequenti lib. 2. Quia respondeo, quod non fuit probatum plus quam semiplene, imo ne quidem semiple[illegible] per alios testes singulares & affectionatos, testes enim singulares non coniunguntur, vt semiplene probent. Alexandri in [illegible] cons. 1. column. 2. versicul. & dicti duo testes. lib. [illegible]. De[illegible] in d. cons. [illegible] 33 column. 3 circa medium & illud est quod dicitur plures testes singulares minus probare quam vnum. B[illegible] de probat. colum. [illegible] ff. de legibus. & in l. [illegible] colum. [illegible] de testibus. Decius in consil. 159. column. 3 circa fin. & in consil. 189. column. 4. Et licet istud dictum [illegible] non soleam ita passim approbare [illegible] testium singularitate de qu[illegible], De[illegible] quandoque [illegible] mus, nod[illegible] singularitatis testium dissolu[illegible] & ad [illegible] claramque doctrinam reducendo, [illegible] stante tanta istorum [illegible] affect[illegible] & [illegible] de [illegible] ¶ Sed longe probatam [illegible] pl[illegible] quam [illegible] ne citra praeiud[illegible] [illegible] modo locum [illegible] si Guglie[illegible] [illegible] primum [illegible] de [illegible]

[illegible] probe [illegible] Sepe dubi[illegible] [illegible] Doctor[illegible] in cap. de praesump[illegible] [illegible] Causa [illegible] Sol[illegible] [illegible] meter oportet [illegible] lendis illud [illegible], ex [illegible] none fat[illegible] factus fuit [illegible] Planc non parum multi [illegible] ipsi iura ornata putant habe[illegible] pecto[illegible] tam ignorantiam tene[illegible] sed [illegible] contra per [illegible] opiniones [illegible] & inauditi [illegible] aculentur, [illegible] rum [illegible] iam [illegible] dicis aut ipsis audi[illegible] N[illegible] illi et dominus Clem[illegible] Boglanus officialis [illegible] ipsum [illegible] ista haec [illegible] etenim illud mal[illegible] licet procetus p[illegible] longe maiora per se ipsum esse turus. C[illegible] commendo pro veritat[illegible] & [illegible] omittendo, ratione habendam esse [illegible] per ipsum Guglati super altar[illegible] & reliqui[illegible] mo[illegible] immemor [illegible] in salut[illegible] rgat. [illegible] Sauliani, die 15. Mar[illegible] formam conu[illegible] Clementem Bo[illegible] in [illegible] olim discipulum [illegible] perspi[illegible] Aymo [illegible] Sauliano I.V.D.

SVMMARIA.

1 Propter [illegible]
2 Ex [illegible]
3 Ex diuersitate [illegible]
4 Tertia [illegible]
5 In generali dispositione non veniunt ea, per quae [illegible]
6 Vna [illegible]
7 An quando [illegible] & dolo.
8 Dolus [illegible]
9 Iuris praesumptio [illegible]

CONSILIVM CCLXX. II.

Pro nobili Magdalena vxore nobilis Laurentii de Sauliano, contra nobilem Seraphinum Monf[illegible] [illegible]

DIVINO [illegible] ex corde [illegible]

te conſtitutione dotium facta de anno 1528. & die 15 Feb. ita quod quitatio facta per dictum Monfortum de contentis in poſteriore inſtrumento, extendatur etiam ad contenta in primo. ¶ Secundo videndum eſt an dicta quitatio reuocari aut reſcindi debeat ex cauſa doli & læſionis, attenta maxime ætate ipſius Magdalenæ? Tertio an obſtet exceptio dotis non numeratæ. oppoſita contra primum inſtrumentum dotis? ¶ Aggredior primum dubium. In quo dicendum videretur, per ſecundam dotis recognitionem receſſum videri à prima, quia poſterior conuentio derogat priori. *l. pacta nouiſſima. cum ibi notatis. C. de pa.* Secundo, quia non videtur veriſimile, quod memoratus dominus Baſilius voluerit duplici onere conſtitutionis dotium ſe grauare. *l. nauis. § cum autem. ff. ad legem Rhodiam de iactu. l. incola. & l. fin. § item reſcripſerunt. ff. ad municip. l. itemque. ... § ſi pater. ff. ſoluto matrimonio. l. ... § qui ... ff. de legatis 2. l. quis dotem ff. de dote prælegata.* Idem in dubio fit interpretatio ut minus quis obligetur, quam ſit poſſibile. *l. quicquid aſtringendæ ff. de verborum obligat. l. ſemper in obſcuris. ff. de regulis iuris. cum ſimil.* Accidit qualitas meriti dictæ Magdalenæ, non digni tanta dote, ſi dotem multiplicatam dicimus, cuius qualitatis ratio videtur habenda. *l. quæro ff. de iure dotium* ¶ Concurrit etiam communis curſus & obſeruantia, quia non ſolent homines dotes bis conſtituere, valet autem argumentum a communiter accidentibus. gloſſ. & Doct. *in l. neque natales C. de probat.* & ex communi curſu inducitur præſumptio. Bald. *in conſil. 351. Ioannes & Federicus. colum. ſecunda ante medium. libro quinto* Imo valet argumentum à communiter accidentibus, etiam quando de crimine ciuiliter arguitur. Abbas *in conſil. 113. colum. 3. libr. 1.* ¶ Rurſus videtur res clara ex declaratione ipſius domini Baſilii, qui atteſtatus eſt de vna tantum dote cogitatum fuiſſe, cuius declarationi videtur ſtandum, ſicut dicitur de confitente, quod poteſt confeſſionem ſuam dubiam declarare. *l. ſi quis intentione ambigua ff. de iudic. cap. cum dilecti. de accuſatio.* Bald. *in conſil. 247. Ad euidentiam. colum. 2. libr. 5.* Anton. de Butr. *in cap. ex literis el primo. in fine. de ſponſalib.* Alexand. *in conſil. 184. colum. 2. libr. quinto cum ſimilib.* Poſtremo agitur de conſtitutione dotium facta per clericos & prælatos, quorum genus dicitur auariſſimum. *gl. in cap. ſi pluribus. in verſ. maior de præbendis. & in c. nonnullis. de clericis non reſ.* ... ideo vbi agitur de ſolutione temporalium, fit interpretatio contra clericos, vt in eis ſolutum præſumatur, quia non eſt veriſimile, pro magna eorum auaritia, quod negligentiam in exigendis eorum miſerint. Abbas *in cap. 1. de deciman.* & de auaritia clericorum tradit Socin. *in conſil. 13. colum. 6. libr. primo.* quod auaritia maxime præſumitur in clericis, ideo propter auaritiam clericorum perit lex de ſacerdote, & viſio de propheta, *c. diaconi ſunt. §. nunc autem. 93. diſtinct.* Quomodo igitur veriſimile eſt, quod clericus ſtrictiſſimi iuris, duplici dotis onere grauatum ſe eſſe voluerit. *argum. l. cum de indebito. ff. de probat.* ¶ Sed præmiſſis non obſtantibus, contrarium puto de iure verius, quod imo duplex dos dicatur conſtituta. & recognita. probatur iſta concluſio, ex

1 regula iuris, quæ habet, † quod propter diuerſitatem ſummarum, diuerſitas præſumitur obligationis. & ambæ ſummæ dicuntur debitæ, cum ſint diuerſæ. *l. ſi ... quis ducenta. in princ. vbi gloſſ. ff. de rebus dubiis.* Bartolus *in l. cum centum in princ. ff. de adimendis legat.* Baldus & Doctores *in l. ſcire debemus. in princ. ff. de verborum obligation.* Alexand. *in conſil. 4. colum. ... in verſic. ſed præmiſſis non obſtantibus. libr. ...* Iaſon *in conſil. 87. colum. 1. lib. ... in l. ſcire debemus. in ſi. in princ. ff. de verb. obligat.* Sed iſta duo inſtrumenta continent diuerſas ſummas, nam primum loquitur de ſcutis mille, recognitis pro dote, & ſcutis centum ex cauſa donationis propter nuptias. ſecundum vero loquitur de ſcutis ducentum ſupra mille ex cauſa dotis, & de ſcutis tercentum ex cauſa donationis propter nuptias, ſtante igitur tanta ſummarum diſparitate, identitas obligationis præſumi non poteſt. ¶ Secundo amplius conſidero, quod licet ambo inſtrumenta continerent eandem ſummam & ex eadem cauſa, adhuc cenſeri deberent diuerſæ obligationes, vt ambæ ſummæ deberentur. *l. quinquaginta cum gloſſ. ff. de probat.* Bartolus *in l. triticum. ff. de verborum obligat.* Alexandr. *in l. qui bis idem in fine. ff. eodem tit. & in dicto conſil. 4. colum. 2. verſicul. accedit deciſio libro primo.* Iaſon *in dicto conſil. 87. colum. 1. libro ſecundo.* ¶ Tertio iſta duo inſtrumenta vltra diuerſitatem quantitatum continent etiam diuerſitatem perſonarum, quia in primo inſtrumento nobilis Michael Monfort confitetur habuiſſe dotes à dominis Clemente & Baſilio. in ſe-

2 cundo vero inſtrumento à Baſilio tantum, ideo per ex diuerſitate perſonarum, diuerſitas etiam præſumitur obligationum. Bart. *in l. ſi ſtipulatus. §. ... ff. de ſolutio.* ſequitur Iaſon *in dicto conſil. 87. colum. 1. poſt med. libr. 2.* ¶ Quarto concurrit diuerſitas temporum, quia primum inſtrumentum rogatum eſt de anno 1528. ſecundum vero de anno 1531. ex qua temporum diuerſitate, diuerſitas etiam præſumitur obligationum, licet ſit identitas rei. Bald. *in l. ... § ſi a primo ff. de legatis 1. in l. Sempronius. in 2. not. ff. de legat. 2. & in l. ne caſu ... de di... lib. 10* ſequitur Alexandr. *in dicto conſil. ... colum. 1. in fin. verſic. ſed præmiſſis non obſtantibus. libr. 1.* Iaſon *in dicto conſ. 87. col. 1. in fi... & in l. plane. 1. §. 1. colum. 4. ſuper gloſſ. in ... oſtendatur. ff. de legatis 1.* Addo Socinum *in l. prima. in prin. col. 5. poſt med. ff. de vulgar.* vbi quod ex diuerſitate loci, temporis, inducitur diuerſitas facti, allegat notata *in l. ſi non ſortem. § libertus. ff. de condictione indebiti.* Addo etiam Alexandr. *in conſ. 3. colum. 2. in fine. verſ. aliud etiam vehementer obſtat. libr. 2. in conſ. 188. in fin. libr.* ... ſed hic plura concurrunt, quia vltra diuerſitatem loci & temporis concurrit etiam diuerſitas perſonæ, & ſummarum, ergo, &c. ¶ Quinto vltra Alexandr. & Modernos iſtam quæſtionem in terminis decidit. Bald. *in conſ. 478 ... inſtrumento. libr. 3.* vbi maritus in vno inſtrumento confitetur habuiſſe ducentum pro dotibus ... in alio vero inſtrumento confitetur habuiſſe trecentum ... dos et quinquagintorum, & ſic vtraque dos viro reſtitui debet. Idem in effectu voluit Bartol. *in d. l. Sempronius Proculo ff. de leg. 2. in 1. oppo.* vbi quod

ex † diuerſitate ſcripturarum arguitur diuerſitas voluntatum, 3 *per dict. l. quinquaginta. ff. de prob.* alia igitur fuit voluntas diſponentium in primo inſtrumento, alia in ſecundo, & ſic ex vtroque inſtrumento agi poteſt. ¶ Sexto confirmantur præmiſſa. nam prima dos conſtituta fuit à Clemente & Baſilio, ſecunda à Baſilio, ſi dicemus ſecundam conſtitutionem primam includere, aut ſub ſecunda includi primam, ſequitur neceſſario nouatio, quæ in dubio non præſumitur niſi expreſſe agatur. *l. fin. Cod. de nouat. not. in l. ſingularia. ff. ſi cert. pet. & in l. qui vſumfructum. ff. de verb. obligat.* ¶ Septimo ex alio dico priorem dotis recognitionem nouatam dici non poſſe, nam ex prima recognitione erat quæſitum ius Magdalenæ, quia ſocer promiſerat eidem reſtituere dotes, notario pro ea ſtipulante, ex qua promiſſione de reſtituendo ſocer erat obligatus, licet re vera dotes non recepiſſet, & poterat ſocer agere contra promiſſores ad ſolutionem, non obſtante, quod poſt ſoceri confeſſionem illi domini Clemens & Baſilius promiſiſſent dotes illas ſoluere, non obſtante illa ſoceri confeſſione, quia ſocer videtur acceptaſſe talem promiſſionem loco ſolutionis, & illa promiſſio eſt in periculo ipſius ſoceri confitentis, vxori autem quæſitum erat ius ex promiſſione de reſtituendo. Bartolus & Paulus de Caſtro *in l. penult. § penult. ff. ſolut. matrim.* ſequitur Alexand. *in conſil. 56. colum. 1. libr. 2. & in conſil. 18. colum. 1. libr. 5.* Socin. *in conſil. 1... colum. 4. verſic. confirmantur poſtremo præmiſſa libr. 2. & in conſil. 88. colum. penult. in fin. libr. 4.* Corneł. *in conſil. 151. in 2. dub. lib. 1. in conſil. 219. colum. fin. libr. 3. & in conſil. 10... libr. 4.* Bald. Nouell. *in tract. de dote. in 8. part. privil. 24.* Neuiz. *in ſylua nuptiali. charta 41. columna. fin. ſecundum parmam impreſſionem.* vbi quod ita obtinuit coram regio Senatu Mediolani. Addo Baldum *in conſil. 234. Verſus confeſſus lib. 5.* licet contrarium late teneat Curtius ſenior *in conſ. 55.* poſt Rom. *in conſ. 445.* hoc ita præſuppoſito quod nobil. Magdalenæ eſſet quæſitum ius in reſtitutione totius dotis, licet non ſolutæ contra ſocerum aut eius heredes, dico quod prima dotis recognitio, etiam ſi partes voluiſſent, & ita intellexiſſent, nouari non potuit in præiudicium ipſius Magdalenæ, quia in poſteriore recognitione, aut in promiſſione in continenti facta per dominum Baſilium conuentum fuit, quod ſocer non teneatur ad reſtitutionem dotium, niſi quatenus ſolutæ eſſent, quod pactum valde erat & eſt damnoſum ipſi Magdalenæ, quæ agere poterat ex primo inſtrumento, etiam non facta ſolutione dotium, ſed non potuerunt dominus Baſilius & ſocer nouare priorem dotis contractum in præiudicium ipſius Magdalenæ abſentis & non conſentientis, & eidem auferre ius quæſitum. *l. fin. ff. de pactis. l. ſi de ... in prin. ... interrogationi. l. non debet. ff. de regul. iur. c. non debet. eodem tit. lib. 6.* ¶ Itum enim † abſentis 4 conditionem meliorem facere poſſumus, deteriorem vero minime. *l. ſolvendo ff. de neg. geſt.* Poſito igitur quod voluntas contrahentium in poſteriore inſtrumento talis fuerit, qualis per partem prætenditur, quid prodeſt talis voluntas ſine poteſtate. *l. nolle. vbi Bald. ... de acquir. her. l. cum te. vbi Bart. C. de donat. ante nuptias. c. cum ſuper. Abbas ... de offic. deleg.* Bald. *in conſ. 316. Rex Romanorum. col. 1. ante medium. lib. 1. & in conſil. ... ad euidentiam præmitto. colum. 2. lib. 5.* ¶ Octauo conſidero, quod ex primo inſtrumento duo erant obligati Clemens & Baſilius, ſi dicimus per ſecundam conuentionem factam eſſe nouationem, Clemens reperietur liberatus,

[illegible] prædictum [illegible] mento, nō- [illegible] per eundam [illegible] dum, quā [illegible] ſoret [illegible] tionem, factam [illegible] cato implicitè, quæ reuocatio fieri non po[illegible] dubio non eſt præſumendum [illegible] per quod in penitum incideret [illegible] derogare diſpoſitioni ſuæ. *gloſſ. in c. cum non deceat. de elect. lib. 6. cum ſimil.* per [illegible] *in auth. conſtitutus colum. 3. de relig. & ſumpt.* Iaſ. *in conſ. 239. colum. 2. post medium lib. 2.* nec [illegible] in generali diſpoſitione veniunt ea, per quæ animæ periculum [illegible], ideo quittatio generalis ad [illegible] non extenditur. Abb. *in conſ. 314. colum. 4. in tertio* [illegible] *lib. 2.* Iam non potest [illegible] contrahentes per ſecundam conuentionem derogare [illegible] quæſito Magdalenæ ex prima, [illegible] aliàs derogatio fieri non poterat, multo minus dicendum eſt, quod per ſecundam [illegible] generalem de prima nihil loquentem voluerit [illegible] derogare, cum non cenſeatur [illegible] in genere, quæ [illegible] in ſpecie prohibetur *l. quamquam. ff. de testam. milit.* [illegible] *ff. de* [illegible] vbi Abb. [illegible] *cum ſimil.* ¶ Decimo per d[illegible] [illegible] in ſecun[illegible] loco factam [illegible] priori [illegible] ogatum, niſi quatenus [illegible] repugnans à prima, ita quod an hæ diſpoſitiones ſimul ſtare aut compati non poſſint, etiam quod ſecunda diſpoſitio ſit derogatoria generalis. Bartol. *in extrauag. ad reprimendum. in ver. non obstantibus.* Rom. *in conſ.* [illegible] *in conſ. 22. colum.* [illegible] *lib. 4.* [illegible] *conſ. 293. lib. 2. cum ſimil.* ſed ſecunda [illegible] nullo modo aduerſatur aut repugnat primæ, cum [illegible] hæ ſimul ſtare poſſint, ergo, &c. Ex præ[illegible] abundè [illegible] compro[illegible] Magdalenæ ¶ [illegible] ad cont[illegible] ex quorum [illegible] Itaque non obſtat primum [illegible] quod [illegible] conuentio derogat priori *l. pacta nouiſſima C. de pact.* [illegible] procedit quando poſterior conuentio eſt contraria primæ [illegible] repugnat vt inuicem compati non poſſint, vt per Decium *in d. l. pacta nouiſſima colum.* [illegible] ſupra in decimo [illegible] mento facto ipſius Magdalenæ. ¶ Non obſtat ſecundum [illegible] quod non eſt veriſimile quod dominus Ba[illegible] voluerit ſe grauare duplici onere præſtationi dotium, [illegible], quod imo eſt veriſimile, ex quo ſecundam [illegible] conſtitutionem fecit diſparis quantitatis in diuerſis temp[illegible], ſi enim duplicem dotem conſtituere noluiſſet [illegible] conſtitutionem feciſſet, ſed ſolum donaſſet ipſi [illegible] ſcutos ducentum: faciendo [illegible] duplicem conſtitui[illegible], ita præſumitur quod [illegible] dup[illegible] [illegible] maximè ſtante diſparitate ſummarum, di[illegible] [illegible] & [illegible] latè ſupra [illegible] ¶ [illegible] cundo [illegible] pondeo, quod hic [illegible] ratio coniunctionis [illegible] & fauor dotis, ex quibus de facili duplicatio præſumi[illegible] Bar[illegible] & Doct. *in l. quoties* [illegible] *in matrim.* ¶ [illegible] [illegible] quod [illegible] diuerſi temp[illegible] [illegible] debeteur, [illegible] quod [illegible] [illegible] habeamus [illegible]

[illegible] Secundo [illegible] reſpondeo [illegible] Magdale[illegible] [illegible] perſonæ [illegible] quæ An[illegible] [illegible]

do verba eſſent ambigua, ſecus vbi verba ſunt clara licet agitur de interpretatione voluntatis, quia vbi verba ſunt c[illegible] a no ſta tur de[illegible] larationi alterius, etiam principis in præiudicium tertii, Paul. de Caſtr[illegible] in *l. heredes palam. §. 1. ff. de teſt.* & Anch. in *conſ. 398. præmitto col. 2. verſ. vd videndum eſt.* Soc. in *conſ. 160. colu. 1[illegible] verſ. ex quibus uſcro libro 2.* Cornel. in *conſi. 67. colum. 2. circa med. libro 3.* Dec. in *conſ. 114. colum. a fi[illegible] in conſi. 299.* Itaque cum verba iſtius ſecundæ conſtitut[illegible] dotitio ſint clara, non videtur ſtandum declarationi domini Bal[illegible], maxime quia non obſcura eſt viri conſtantia. ¶ Non obſtat [illegible] & vltimum argumentorum de auaritia clericorum [illegible] præſumptio auaritiæ, vbi conſta[illegible] de h[illegible]. ¶ Secundo reſpondeo quod non præſumuntur clerici [illegible] circa neptes & nepotes, iuxta illud pontificis, Cupiunt ſummi [illegible] nepot[illegible], & ipſum hoc videmus plerumque [illegible], quæ dicitur veritatis lumen. *l. per hanc in fi.* vbi Salic. *C. de t. mpor. appella.* & dicit[illegible] experientia rerum magiſtra. *§. fi. inſtitut. de actio. capit. quam fit. de cle. [illegible] libro 6.* & val[illegible] argumentum ab experientia *l. ſi ſic boues. §. hoc verbo ff. de lega.* ¶ Tertio reſpondeo quod præſumptio auaritiæ ceſſat in domino Baſil[illegible] plusquam liberali: vt aiunt ¶ [illegible] præmiſſi abunde & efficaciter explicatum habemus primum conſultationis articulum, in quo ipſo prolixius fui atque arbitratus, ubi et magnitudinem & articuli nudum ac difficultatem, ſed breuior in [illegible]quentibus

7 ſiam. ¶ Capio ſecundum dubium, [illegible] an quitatio re[illegible]ndi debe at e[illegible] capite læſionis & doli. In quo dub[illegible] breuiter puto concludendum quod ſic, & quod in tali quit[illegible] dolus vterque interuenerit, d[illegible], ex pro[illegible] poſito & re [illegible]. Dolus ex propoſito arguitur, [illegible] ipſa Magdalena tenellam æt item [illegible] gens ad quitandum [illegible] ta ſibi competentia ex ſecunda conſtitutione dotium nulla [illegible] lectu[illegible] inſtrumenti ipſi[illegible] ſecundæ [illegible] ognit[illegible] niſi [illegible] declaratum ius ſuum facto & in [illegible], quod ex p[illegible] ma recognitione co[illegible] ibi [illegible] ad reſtitutionem [illegible], licet ſoluta non eſt [illegible] iuxta doctrin. Bart. in *d. l. pomb. § ſi vir. ff. ſoluto matrim. cum aliis ſupra adductis in 7. fundamento.* Sed [illegible] plicater narratum fuit quod dos recog[illegible] ſocerum c[illegible] ſtante inſtrumento recepto per egr. Ia[illegible] Merma, in totum ſo[illegible] uta non fuerat ipſi ſocero. & ob id in[illegible] tur ipſa Magdalena ad q[illegible] tandum quaſi teneretur qu[illegible] piat[illegible] nis dos ſoluta non eſſet. Profecto ſi narratum & ex[illegible] ſuiſſet, quod erat alia & prior recognitio dotis ex qu[illegible] quæſitum e[illegible] ipſi Magdalenæ etiam ſi dos ſoluta nun[illegible] non eſt veriſimile quod ipſa Magdalena ius ſuum remittere [illegible] *l. cum de indebito. ff. de proba.* quæ [illegible] maxime procedit in mulieribus quarum genus dicitur auariſſimum, & facit [illegible] contra [illegible] quoties donat[illegible] *ego cum gl. ff. ad Vellean. [illegible] ſtipulata. §. 1. ff. de donat. inter vir. & vxor.* & [illegible] accedit, quod mu[illegible] tenuitatius ſui[illegible] *l. ſi a ſponſo. § quod ſponſa. C. de donat. ante nuptias.* Solum enim fuit narratum inſtrumentum Mermæ & al[illegible] rum quod do[illegible] tota ſoluta non eſſet quia virtute illius inſtrumenti[illegible] alterius per eundem Mermam in [illegible] continenti recept[illegible] ocam eiſ[illegible] em teſtibus, ſolum tenebatur [illegible] dotem re[illegible] atenus ſoluta eſſet, ideo ex taciturnitate alterius [illegible] & [illegible] competentis ipſi Mag[illegible]næ, [illegible] cognitionis dolus ex propoſito argu[illegible] ſo [illegible] tacente, na[illegible] ex ta[illegible]turnitate dolū arguit text. *[illegible] l. paritur. § ſi venditor. [illegible] de ædil. edict.* tradit Paul. de Ca[illegible]o, in c[illegible] 411. [illegible] *col. 1 in p[illegible]* vbi quod præſumetur dolus in tace[illegible] te veritatem, v[illegible] aliquid e[illegible] queat: quod dictum non po[illegible] magis pr[illegible] pius accedere [illegible] uitnos noſtros, nam racum [illegible] tutaluæ iorus, quo faci[illegible] quitanonem extorqueret: & ibid. dicit Paulus, quod præſumitur dolus contra eum, qui nō certiorat illum de beneficiu[illegible] competenti prout hi[illegible], vbi ſocer non certiorauit nurum tenellæ ætatis de iuribus ſibi competentibus ex p[illegible] ma recognitione. Alibi ſcribit idem Paulus, in *conſ. 465. Viſo compromiſſo col. penultima. poſt med. libro 1.* quod præſumitur dol[illegible] in arbitris qui faciunt ratificare laudum antequam ill[illegible] legatur, & ſic tacito eius [illegible] note, alibi ſc[illegible] ibunt Innocentius & Do[illegible] tores. in *capitul. cum dilecta. de præſcript.* quod [illegible] quæ generalibus verbis vtuntur apud principem [illegible] certiorando de omnibus. Similiter [illegible] in reſcripti impetratione præſumitur in dolo. Bald. in *conſi. [illegible] 15. Statuto cauetur quod nullus co unina 1. in fin. [illegible] 3. quod [illegible] reperitur in conſilio 426. lib. 5.* Idem dicit Bald. in *conſilio 306. Proponitur quod quidam Antoniolus. ante fin. lib [illegible]* Abb. in *conſilio 109. in ſecundo dubio libro 2.* Alibi ſcribit idem Abb. in *conſil. 23. columna 1. libro 1.* quod præſumitur fraus in tacente verum, ad [illegible] commodum & deceptionem alterius. Dolum etiam ex taciturnitate arguit Alexan. in *conſ. 14. columna fin. & in conſi. [illegible] libro 5.* Cornel. in *conſ. [illegible] 9. columna 6. verſ. tamen in caſu noſtro. libro 2. & in conſ. 12. colum. fi. & in conſ. 81. libro 3.* Iaſon in *l. pati[illegible] 1. [illegible] de pactis.* ¶ Et pro hoc facit, nam [illegible] peccat qui verum tac[illegible]t, ſicut qui falſum loquitur. *cap. qui [illegible] 11. qu. 3. capit. 1.* vbi Abb. *de crimin.* [illegible] Bal in *l. presbyteros. de epi. & cleric.* [illegible] in omittente aut loquen[illegible], non eſt dubiu[illegible] quod eviden[illegible] & verus arguitur do[illegible] *l. ſi quis affirmauerit. ff. de dolo. auth. item poſſeſſor. C. qui potio. in pig. ha. [illegible] procurator qui pro euictione circa fin. ff. de procurat.* omne enim male factu[illegible] tate & do[illegible] ſe [illegible] æſtimatur actum *l. diuus ff. de ſicar. l. ſi non conuenit. C. [illegible] mandati. [illegible] de præſcript. cum ſimil.* ¶ Secundo [illegible] ar- 8
guitur dolus non ſolum ex ta[illegible]turn[illegible] ea, ſed etiam ex falſa expreſſione, quia [illegible] tas eſt quod [illegible] fuit dos, & illud negari [illegible] non poteſt, quia ſocer perce[illegible] fructus illos membri Abbatiæ Cataniannæ, quod dici[illegible] orgii per annus duodecim, qu[illegible] dditus aſcend[illegible] centum & quinquaginta [illegible] ſingulos annos ita retul[illegible] Magdale[illegible] agēs, [illegible] veritatem in conſ[illegible] re & [illegible] quod in foro animæ [illegible] ſ[illegible] quia ſocer admini[illegible] trauerat integr[illegible] re[illegible] ditus tot[illegible] nium, de[illegible] perceperit fructu[illegible] illius membri [illegible] gii, annis [illegible] vt ſupra: & [illegible] quod recepe[illegible] pecunias præ[illegible] ſcutos quingento[illegible], & de perceptione fru[illegible]um membri [illegible] Georgii, per annos duode[illegible], quod eſt [illegible] notorium & facillime probabitur. Quod [illegible] non obſcure apparet de falſa expreſſione facta [illegible] dote [illegible] tas ſolutas non eſſe, ex mendacio [illegible] & [illegible] aſſertione non eſt dub[illegible] olus præſumi. *d. l. ſi quis affirmauerit. ff. de dolo. d. auth. item poſſeſſor. C. qui potio. in pign. hab.* Anch. in *conſi. [illegible] 6. Legum in canone colum. 2. verſ. & bene aduertendum.* Paulus de Caſtr[illegible] in *conſi. 116. Viſis & conſideratis omnibus ſuperius enarratis circa fi. libro 1.* Alexan. in *conſ. 41. colum. 3. in fi. libro 3. & alibi ſæpe.* ¶ Te[illegible] arguitur dolus in ſocero ex malo effectu ſecuto, qui [illegible] dixit ſe dare in [illegible] taciturnatas [illegible] ipſe & eius heredes ſemper poſſederunt in tantum quod ipſa Magdalena facta eſt vidua indotata ſine adiutorio, ex effectu autem malo ſubſecuto arguitur dolus, quia cuius effectus malus eſt, eius quoque intentio mala præſumitur. Bal. in *l. 1. circa fi. C. ſi quis omiſſa cau. teſt.* & dici pote[illegible] de Magdalena agente quod [illegible] ſcribitur Pſ. [illegible]. Et viduæ eorum non pl[illegible] bantur: ſed Deus ipſe omnipotens iudex eſt viduarum, iniurias earum vleiſcens, Pſalm. 67. Turbabuntur à facie eius patris orphanorum & iudicis viduarum. ¶ Quarto arguitur dolus in ſocero, quia extorſit iſtam quitationem mediante quadam ſolutione verbali, in rot mobilibus & [illegible] ſtabilibus, de quibus nunquā appa[illegible] ruit neq; apparere poteſt, & nouit Deus quæ mobi[illegible] quæ[illegible] ſtabilia [illegible] in ſolutum fuerint data, ita e[illegible] alia ſo[illegible] tione dolum arguit Paulus de Caſtro, in *conſi. [illegible] 42. Conſiderandum e[illegible] imo colu. 2. ante medium. [illegible] col [illegible] circa medium. & in conſ. 385. [illegible] colum. 2. libro 1.* quod præſ[illegible] mitur dolus in tutore [illegible] extorquente quitationem ab olim p[illegible] o a [illegible] computum [illegible] & [illegible]. Idem [illegible] dit [illegible] Anch. in *conſi. [illegible]. Viſo facti narratione & copia.* Socin. in *conſi. [illegible] 9. colu. 3. libro 3. & in co[illegible] 2. col. 4. circa med. libro 4.* I. [illegible] in *conſil[illegible] colum. [illegible] poſt medium. lib[illegible] 2. & in conſilio 14. colum. 3. libro 1.* A[illegible] do Bald. in *conſ. [illegible] 8. [illegible] conſiderandum eſt. libro 2.* vbi quod iuramentum min[illegible] ſuper liberatione tutoris, qui re[illegible] qua non reſtitu[illegible], debet [illegible] tanquam captioſum. ¶ Quinto arguitur d[illegible] veras & ex propoſito ex læſione non [illegible] ipſius Magdalenæ [illegible] enormiſſima, quia ex [illegible] quitatione facta eſt & remanſit [illegible] ta, cum ex dote egregia parum aut nihil rep. [illegible] habere & [illegible] videtur læſiu non vlti[illegible] dum [illegible] ſed [illegible] quo cum ex læſione tam exceſſiua dolus arguitur ex propoſito nedū reipſa, quia non ſit veriſimile, quod paſſus q[illegible] fuerit tantam læſionem ſine minis, perſuaſionibus aut al[illegible] fidus ad dolum paratis, ita dolum ex propoſito ex tanta læſione tanquam exceſſiua arguit Bald. in *l. [illegible] §. item ſacramenta de pace iura. fir.* vbi quod ex enormitate facti præſumitur malum con[illegible]lium, quod Bart[illegible] dum refert & [illegible] quitur Barba *inter conſ. Calia in conſilio 28. columna 6.* Ad[illegible] Bald. in *conſilio 215. Praeclus talo [illegible] & libro 1* vbi quando enormitas læſionis eſt in principio, ibi præſ[illegible] dolus. Idem tradit Antu. de Butr. in *conſ. 45. Domina Orabila colum. 2. poſt medium.* [illegible] quod de facili præſumitur cum tam immoderata geſta, [illegible] quod de valore certificatus quis fuerit, quid hic dicimus, vbi iſta puella non fuit

tis, receptis per quondam Merinam & ex confeſſione ipſius ſoceri in aſſerto inſtrumento quitationis, vt mirandum ſit oppoſitam fuiſſe talem exceptionem. Profecto cum dominus Baſilius adhuc teneat illud membrum ſcilicet Georgij, ſi ſocer non percepiſſet eius redditus vſq; ad complementum dotis, veriſimiliter egiſſet contra ipſum Baſilium ex inſtrumento publico, & contra quem agendum erat, nō etiam contra ipſam Magdalenam oppoſita excep. dotis non numeratæ, vt ſupra dictum eſt in primo dubio in ſeptimo fundamento: & iſtud eſt quod ſcribit Abb. *in conſ. 73. colum. 3. lib. 3.* quod vbi præcedit confeſſio receptæ dotis, deinde ſequitur promiſſio, prout hic, non opponitur exceptio dotis non ſolutæ. Ex præmiſſis apparet abunde & clare reſponſum ad omnia dubia, & quod intentio ipſius Magdalenæ efficaciter videtur fundata ſaltem quoad contenta in prima recognitione, pro qua etiam in dubio videtur pronunciandum fauore dotis, ne remaneat indotata. *l. in ambiguis. ff. de reg. iuris.* late Scriben. *in l. 1. ff. ſoluto matrim.* & Moder. *in tract. de dote. per totum.* Et ita de iure reſpondeo, ſi duo ſamotſi iudicio, reſpectu primi inſtrumenti recognitionis dotis, etiam quo ad forum animæ: quod vero ad ſecundum, iura quidem & Doctores ita videntur loqui, conſcientia autem ſecundum iura videtur conſideranda, ſed partis eſt ſuæ ipſius ſaluti proſpicere quomodo habeat veniam, quia apud DEVM manifeſta ſunt omnia, Hebræorum quarto. Omnia nuda & aperta ſunt oculis eius, & Pſalm. 18. Delicta quis intelligit q. d. Deo illa ſunt clara, & Pſal. 68 Deus tu ſcis inſipientiam meam, & delicta mea à te nō ſunt abſcondita. Devs enim ſcrutatur corda & renes, Pſal 7. & Pſal. 37. dicitur, Domine ante te omne deſiderium meum, & Pſalm. 44. Nonne Devs requiret iſta, ipſe enim nouit abſcondita cordis: licet aliter exiſtiment ſtulti, vt Pſalm. 63. Dixerunt quis videbit eos, & Pſalm. 58. Quoniam quis audiuit. Quamobrem ipſam Magdalenam interrogatam eſſe volui quid ſciret de duplici dotis recognitione, quæ ipſa reſpondit ſe non compungi, & peccatum contra eam non eſſe: & optimum habere teſtimonium conſcientiæ ſuæ: videat igitur ſi dicere poſſit cum Propheta, Pſalm 88. Beatus populus qui ſcit iubilationem, id eſt, qui in candida conſcientia gaudet. Sauiliano 1. 24. Maii. 1546. Aymo Crauetta ex Sauiliano. I. V. D.

SVMMARIVM.

1 *An compendioſa ſubſtitutio contineat vulgarem.*

CONSILIVM CCLXXXIII.

In cauſa Ioannis Ruſeris à Pinarolio.

DIVINO ſubſidio ex corde poſtulato. De anno 1498. & die 6. Septembris Ioannes Ruſerii à Pinarolio inſtituit heredem Luciam eius neptem, ex fratre Manitio præmortuo, & vxorem Iacobi Sabaudi, & ea quandocunque decedente ſeu deficiente, ſubſtituit filios maſculos ipſius Luciæ, tam natos quam naſcituros, & filios maſculos ipſorum filiorum, & ipſis deficientibus, ſuperſtitibus filiabus dictæ Luciæ eaſdem filias ſubſtituit in dimidia parte bonorum ſuorum, & in alia dimidia dictum Iacobum Sabaudi, & ipſo Iacobo quandocunque decedente ſeu deficiente ſine liberis maſculis, voluit ſuam hereditatem peruenire Franciſco de Alaxio, alias de Iacobineta conſanguineo ipſius teſtatoris, & ipſo Franciſco deficiente ad filios maſculos ipſius Franciſci. Mortuo teſtatore deceſſerunt memorati Iacobus Sabaudi relicto vno filio Matthæo, profeſſo religionem fratrum Minorum conuentualium, poſtea defuncto, ac dictus Franciſcus de Alaxia relictis filiis maſculis poſtea defunctis excepto Ioanne. Deinde mortua d. Lucia heres inſtituta relictis Guilhelmina eius filia ac etiam relicto dicto Ioanne de Alaxia, filio dicti Franciſci, qui Ioannes agit ad fideicommiſſum dicti Ioannis teſtatoris pro dimidia coram ordinario Pinarolii. Quæritur quid iuris? ¶ In hac difficultate vidi conſilia Doctorum inuicem contendentium, ſed pro maiori declaratione arguentius ad partes viam ferro aperiendo, & aromatū naturam ſectando, quæ dulcius & efficacius odoreſcunt quo fortius contunduntur. Videretur itaq; dicendum prima fronte non eſſe locum ſubſtitutioni, in fauorem dicti Ioannis de Alaxia, filii Franciſci, quia Franciſcus & deinde eius liberi fuerunt vocati caſu quo Iacobus Sabaudi decederet ſine liberis maſculis, ſed deceſſit Iacobus relicto vno filio Matthæo, ideo defecit conditio. *l. non eſt ſine liberis. ff. de verborum ſignif. l. pater Seuerinam § ita fideicommiſſo. ff. de condition. & demonſtratio. l. 1. C. de condit. inſer. l. iubemus. § fin autem Cod. de Trebellian.* in quibus iuribus probatur quod diſpoſitio facta de filiis in numero plurali, verificatur in vno, quoties agitur de eorum fauore & commodo, tradit Alexan. *in conſi. 31. in primis. lib. 3.* Deci. *in l. 1 colum. 3. C. de pactis. in conſi. 50 & alibi ſæpiſſime.* Cum igitur defecerit conditio per exiſtentiam dicti filii, illa non videtur reuiuiſcere mortuo poſtea ipſo Matthæo, ſine liberis. *l. heredib. ff. ad Trebellian. l. cum vxori. Cod. quando dies leg. ce.* Oldrad. *in conſi. 21. Thema tale eſt.* Paul. de Caſtr. *in conſi. 324. ſuper 2. puncto. colum. 2. poſt med. lib. 1. & in conſil. 97. Nemo prorſus. lib. 1.* late Moder. *in l. in ſubſtitutione. ff. de vulg. & in l. cum quis. C. de inſtit. & ſubſtit.* Socin *in conſ. 50. colum. 4. lib. 1.* Decius *in conſ. 63. in 1 dubio. & alibi ſæpiſſime.* ¶ Neque videtur obſtare, quod vbi teſtator facit plures gradus ſubſtitutionum fideicōmiſſariarum, primis gradibus deficientibus, videtur locus vltimo. Bart. in *l. quamdiu vltima. in fin. ff. de impub. & vul.* quem ibi Doctor. communiter ſequuntur tradit Socin. *in conſ. 62 colum. penult. libr. 1.* & idem Socin *inter conſ. Corn. in conſ. 398. libr. 3.* cui conſilio ſubſcripſerunt Caccialu. & Corn. vt ibi patet, tradit Dec *in conſ. 238 in 1. dubio. in conſ. 318. colum. 2. poſt med. & in conſ. 427.* ¶ Quia præmiſſa videntur procedere dummodo purificetur conditio, ſub qua vocatus eſt vltimo ſubſtitutus, per text *in l. penult. ff. de vulg.* Oldra. *in conſ. 177. teſtator.* Alexand. *in conſ. 1. col. 1. vers. 3. probatur lib 1.* Corn. *in conſ. 299. col. 2. verſ. ſed licet prædicta vera ſint. lib.* Pro quo facit, nam licet rupto teſtamento ex cauſa prætentionis aut exheredationis conſeruetur fideicommiſſum vniuerſale, vt habetur *in authen. ex cauſa. C. de lib. præter.* Illud tamen intelligitur ſub eadem qualitate & conditione, ſub qua relictum erat fideicommiſſum, ideo ſi heres grauatus erat ſub conditione, ſi deceſſerit ſine liberis, filius præteritus, aut exheredatus, nō tenetur ad fideicommiſſum, niſi heres inſtitutus decedat ſine liberis, & ſic remanet fideicommiſſum apud filium præteritum aut exheredatum cum ſuo onere & cum ſua conditione. Bartol. *in l. periculum. §. fin. in l. cum pater § ab inſtituto. in fin ff. de leg 2. & in dict. authent. ex cauſa. colum. antepenult. verſ. ſed circa hoc dubitatur. C. de libe. præter.* vbi Doctor. ſequuntur. Eodem modo deficientibus primis gradibus ſubſtitutionum, licet fideicommiſſum remaneat apud heredem, cum onere reſtituendi vltimo ſubſtituto, remanet tamen cum ſua conditione & qualitate ſub qua vltimo ſubſtitutus vocatus eſt. Et iſtud fundamentum inclinauit in hanc partem duos dominos, aduocatos Taurini agentes, licet non explicent, & vnus ex eis ſatis obſcure & confuſe loquatur. ¶ Sed præmiſſis non obſtantibus, contraria opinio videtur de iure verior. Et conſidero quod gradus ſubſtitutionum, de quibus agitur, omnes videntur compendioſi: teſtator enim ſimpliciter ſubſtituit in caſum mortis inſtitutæ & ſubſtitutorum, quo caſu ſubſtitutio dicitur compendioſa. Bart. & Doctor *in l. Centurio colum. 12. ff. de vulg. in l. precibus.* vbi Decius *colum. 8. C. de impub.* & alibi ſæpe Doctores. Compendioſa † autem ſubſtitutio, non eſt dubium, quod non contineat vulgarem ſubſtitutionem. Cyn. & Doct. *in d. l. precibus.* Bartol. *in conſ. 5. Viſa quadam petitione. column. 2. & in conſil. 40. ſuper eodem teſtamento.* Baldus *in conſ. 428. quia in ſubſtitutione. libro 4.* Quod procedit licet fiat ſubſtitutio compendioſa per verba communia. Paul de Caſt. *in conſ. 152. Pro cuius dubium. columna 5. in fin. lib. 1.* Et quando ſubſtitutio compendioſa reſoluta eſt in vulgarem, quia caſus vulgaris euenit, idem de ea iudicatur, quod de vulgari Bart. in *l. heredes mei § cum ita co'u. fin. ff. ad Trebellian.* Alexand. *in conſ. 1 colum penult. poſt med. libr. 1.* Hoc ita præſuppoſito, quod omnes iſtæ ſubſtitutiones dicantur compendioſæ, & quod euenerit caſus vulgaris, dico quod vbi fiunt plures gradus ſubſtitutionum compendioſarum, aut vulgarium, deficientibus primis gradibus, fit locus vltimo, & iſte caſus minorem habet dubitationem quam vbi fit multiplex gradus ſubſtitutionum fideicommiſſariarum, & de hoc eſt text. in *l. ſi Titius. & in l. coheredi. in princip. ff. de vulg.* Tradit Bald. in *conſilio 162. Quidam fuit ſubſtitutus. libr. 1. & in dict. conſ 428 Quia in ſubſtitutione libro 4.* Soci. in *l. 1. colum. 67. verſic. circa primam queſt.* Bartol *ff. de vulg. & in dict. conſ. 52. colum. penult. libr. 1.* ¶ Sed in caſu noſtro iſtæ ſubſtitutiones compendioſæ reſpectu ſubſtitutorum reſolutæ ſunt in vulgarem per mortem ſubſtitutorum ante heredem inſtitutam, non dico quod ſint vulgares reſpectu inſtitutæ, quia quo ad eam ſubſtitutio vulgaris defecit adita hereditate. *l. poſt aditam. C. de impub.* ſed eſt locus vulgari reſpectu ſubſtitutorum præcedentium, qui heredes eſſe non potuerunt propter mortem ante heredem. & ita ſubſtitutionem vulgarem reſpectu

ſubſtitutorum conſiderat Bartol. *in d. l. quamdiu. vltima. ff. de acquir. heredit.* ideo mortuis præcedentibus ſubſtitutis, locus videtur ſubſtituto vltimo loco, quæ concluſio videtur ſine dubio procedere, niſi eſſent contraria ſupra adducta, ex quorum ſolutione & confutatione clariſſima fiet difficultas. Itaque non videtur obſtare, quod vltimo ſubſtituti fuerunt vocati ſi Iacobus Sabaudi decederet ſine liberis maſculis, & quod illa conditio deficit mortuo Iacobo, relicto Matthæo filio, quia reſpondetur, quod virtute ſubſtitutionis vulgaris quæ conſideratur inter ipſos ſubſtitutos, filii Franciſci de Alaxia ſubrogantur in locum ipſius Iacobi Sabaudi, & perinde eſt ac ſi loco ipſius Iacobi vocati fuiſſent, in gradu ipſius Iacobi, qui ſimpliciter fuit ſubſtitutus ſine illa conditione ſi ſine liberis: cum enim deficeret gradus ſubſtitutionis in quo Iacobus vocatus fuerat, nō videtur conſiderāda conditio appoſita ſequenti gradui, ſi Iacobus deceſſerit ſine liberis maſculis, quia talis conditio fuit appoſita præſuppoſito caſu, quod Iacobus ſuccederet & admitteretur ad ſubſtitutionem, eo autem non admiſſo admitti videtur ſequens gradus in locum eius non habito reſpectu, quod Iacobus maſculum reliquerit. Ita in terminis reſpondet Paulus de Caſtro, *in conſilio 1 2. Pr[illegible] dubium. columna 2. in fin. & ſequen. lib. 1.* Idem ſentit Dec[illegible] *in con[illegible] 416 columna penultima in fin. verſic. vltimo non obſtat.* ¶ Sed dicet aliquis, quæ eſt ratio diuerſitatis, quod vbi vltimo ſubſtitutus admit[illegible] per fideicommiſſariam deficientibus prioribus gradib. inſpicitur conditio adiecta vltimo in hac[illegible] ſiſtitia non intendit teſtator vocare vltimo ſubſtitutum niſi ſub co[illegible] o[illegible] ipſa appoſita, quia cogitauit teſtator, quod præcedens g[illegible] res admitteretur, nec voluit præcedenti gradui grauamen imponere, niſi ſubſtitutus in eo decederet ſine liberis, ſed in vulgari cogitauit teſtator quod præcedens gradus poſ[illegible] deficere ex capite voluntatis aut impotentiæ, ideo in vulgari dicitur teſtator ſubrogare vltimum ſubſtitutum, loco præcedentis ſubſtituti, conſequenter ſolum inſpicitur conditio appoſita ipſi ſubſtituto præcedenti. ¶ Sed pro maiori declaratione adhuc inſtatur, quia videtur, quod etiam in vulgari attendi debeat conditio appoſita in ipſa vulgari, ut non ſufficiat heredem inſtitutum non adire ex capite voluntatis aut impotentiæ, niſi etiam verificetur cōditio ipſi ſubſtitutioni vulgari appoſita, puta, quandocunque heres inſtitutus deceſſerit ſine liberis, ſubſtituo Titium. pone quod decedat heres, viuo teſtatore, relictis liberis, certè nō erit locus vulgari licet euenerit caſus impotentiæ, mortuo herede, in vita teſtatoris [illegible] quo [illegible] heres liberos, & ſic conditio defecit. Ita C[illegible]dia[illegible] *in conſ. 141. ? [illegible] dominus i.* cuius verba tacito authore tranſplantauit Ioannes Andr. *in addit. Specul. in titulo de teſtament. §. [illegible] addit.* Seq[illegible] Socin. *in l. [illegible] columna 7. verſic. & per prædicta hu[illegible] dubio conſulus. ff. de vulg. & ita conſuluit in conſilio 76. columna [illegible] libro 3.* tradit idem Socin. *in l. [illegible] columna 8. ff. de condit. & demonſtrat.* Curtius iunior *in conſilio 33. columna 2. verſ. ſtantibus præmiſſis.* Rubeus Alexandrinus. *in conſilio 16* ¶ Reſpondeo quod intelliguntur præmiſſa, in conditione appoſita, in eo gradu, ex quo ſubſtitutus vulgaris admittitur, ideo ſi in caſu noſtro ſi[illegible] eſſet ſubſtitutio Luciæ, heredi inſtitutæ, ſi deceſſerit ſine liberis, & ipſa reliquiſſet liberos, non eſſet locus vulgari; ſed in caſu noſtro ſubſtitutus vltimus non admittitur ex vltimo gradu, cui conditio appoſita eſt, ſed admittitur ex præcedenti in quo Iacobus Sabaudi vocatus erat virtute ſubrogationis, quia ſubrogatur in gradum in quo Iacobus fuerat vocatus, in quo gradu ceſſat talis conditio, quæ ſubrogatio intelligitur facta ſub eiſdem qualitatibus, ſub quibus ipſe Iacobus vocatus erat. Secundo principaliter reſponden ad argumentum, quod imo Iacobus Sabaudi videtur deceſſiſſe ſine liberis maſculis, ex quo Matthæus erat profeſſus religionem fratrum minorum, qui habentur pro omnino mortuis & extinctis, nec faciunt fideicommiſſum. Bartol. *in l. filiusfamil. § cum quis. in fin. ff. de leg.* Bald. *l. cum acutiſſimi. columna fin. verſi. item numquid frater minor. C. de fideicommiſſ.* Decius *in c. p. in præſentia. colum. 4. verſi. 7. iuxta ordinem de probatio.* niſi dicamus iſtud non procedere, ſed in fratribus min[illegible] ūs conuentualibus, quia ſaltem in communi ſunt capac[illegible] bonorum ex priuilegio. ¶ Ex præmiſſis apparet, quam ſit diffi[illegible] ilis iſta materia, & qua[illegible] iudicando magis [illegible] ligere propter [illegible] pa[illegible] em in fauorem ſubſtituti, tanquam magis conſonam vo[illegible] teſtatoris, ſ[illegible] luo ſemper iudicio. Sauiliani. 12. Iunii. 1546. [illegible]o Craueta, ex Sauiliano. I. V. D.

SVMMARIA.

1 *Ad quem pertineat ius commendandi?*
2 *Q[illegible] intelligatur commendare?*
3 *[illegible] conſequenter ſit ad caſum, in quo non militat eadem ratio.*
4 *Verbum prouidemus, quomodo poſſit intelligi.*
5 *Commenda quomodo improprie dici debeant?*
6 *Actus qui ſequitur, præſumitur fieri ex titulo & cauſa præcedenti.*

CONSILIVM CCLXXXIV.

Pro domino Eme ex Brianzono contra magiſtrum Thomam Molaris presbyterum ſecularem Gratianopolis.

DIVINO ſubſidio ex corde poſtulato. In hac cauſa beneficiali inter dominum Franciſcum Eme & vene[illegible] m dominum Thomam Molaris, tria dubia diſcutienda [illegible]. Primum, an Vicarius domini præpoſiti & capituli Vl[illegible] potuerit prioratum, de quo agitur commendare prædicto Molaris ad ſex menſes. Secundum, an dicatur idem V[illegible]ius c[illegible]mm[illegible] daſſe per verba illa, tibi auctoritate apoſtolica [illegible] penſato conferimus & prouidemus. Tertium, [illegible] m[illegible] nda dicatur ſubl[illegible] dominan[illegible] cum capitulo in collatione [illegible] ſtionem Vicarii, & ant[illegible] ſp[illegible] Vicar[illegible] ipſum dominum præpoſitū cum capitulo ¶ C[illegible] per[illegible] um, non arguendo ad partes, vi[illegible] tur breuiter c[illegible]de[illegible], talem commendam per Vicarium fieri [illegible] potuiſſe d[illegible] ci fundamento. Primo, † quia ius commen[illegible] nd[illegible] d eum ta[illegible]m 1 pertinet, qui conferre poteſt de iure communi [illegible] ſecu[illegible] ſi con[illegible] tendit ius competat de iure ſpeciali, ideo [illegible] pitulum [illegible] et Epiſcopo negligente conferre poſſit beneficia. *cap. 2. de conceſſ. præben.* commendare tamen non poteſt Gemin. *in cap. nemo deinceps. in fin. de electio lib. 7.* ſequitur F[illegible]lin. *in c. cum olim. columna penultim. verſic. ad 9. quæſt. d. [illegible] & obe[illegible] & in c. [illegible] columna [illegible] verſicul. ſimiliter vulenum de præſcript.* Sed Vicarius Epiſcopi aut alterius [illegible] prælati de iure communi, beneficia conferri non poteſt, niſi ſpecialiter concedatur. *cap. fin. de offic. vicar. lib. 6.* ergo licet in mandato vicariatus concedatur poteſtas conferendi, non tamen videtur comprehendi poteſtas commendandi, niſi ſpecialiter hoc exprimatur, cum mandatum dicatur ſtricti iuris. *leg. diligenter ff. mandati. capitul. cum d[illegible] de reſcripto. cum ſimilib.* ¶ Secundo conſidero, quod ius commendandi dicitur odioſum propter incommoda maxima, ex tali commendatione prouenientia: experientia enim docuit occaſione commendarum diuinum cultum plurimum minui, animarum [illegible], quibus imminet, negligi hoſpitalitatem conſuetam & debitam non ſeruari, ruinis ædificia ſupponi, ipſorum [illegible] in ſpiritualibus & temporalibus labefactari &c. vt habetur *in extrauag. innocent. ſexti.* vbi [illegible] genus prouidendi per viam commendæ propter [illegible] reprobatur, eadem etiam & alia peiora incommoda commendarum refert Clemens quintus *in extrauag. ex ſuperne poſita in titul. de præbend.* hoc ita præſuppoſito, quod prouiſio per viam commendæ dicatur odioſa, dico quod in generali poteſtate conferendi beneficia conceſſa Vicario, non cenſetur comprehenſa poteſtas commendandi, cum in generali diſpoſitione odioſa non veniant *l. Lucius. §. Titius. ff. de leg. 2. l. idem. §. ſtabi. verſicul. ſed ſi ipſe ff. de condit. ob turpem cauſ. capit. Alma de ſentent. excommun. lib. 6.* quæ iura ad hoc citat Anchar. *in conſilio 21 1. de iure commu. [illegible] colum. 2. poſt princip.* Calcat. *in conſ. 8. colum. [illegible] circa med. in tit. de ſentent. & re iud. vbi facit mentionem de d. conſil.* Anchar. tradit Socin. *in conſi. 57 columna 1. lib. 3.* Deci. *in conſ. 286. colum. 2. & in conſi. 161. colum. 3. in fin.* Rurſus in generali mandato [illegible] catu non poteſt dici venire ius commendandi temporaliter, per quod eccleſiæ præiudicium tam graue infertur iuxta not. per Bart. & Docto. *in l. cum Aquiliana ff. de tranſact.* vbi quod in generali & ampla poteſtate conceſſa arbi[illegible]s, non venit ius exigendi parte[illegible] ad faciēdum generalem quitationem, quia per eam præiudiciū nimis graue infertur partibus, quanto magis iſtud conſiderandum eſt in caſu noſtro, vbi agitur de præiudicio eccleſiæ & cultus diuini. ¶ Tertio iſta concluſio videtur probari ex eo, quod nouiſſime ſcribit Gomeſius *in regul. cancel. de triennali poſſeſſore. qu. 5.* vbi late diſputat an commenda dicatur verus & legitimus titulus: & an diſpoſita in materia collationis, locum habeant in commenda: tandem concludit, quod vbi datur commenda in perpetuum, & cum plena poteſtate, dicitur commenda verus & legitimus titulus, & tunc diſpoſita in [illegible] prælato habere ius collatio[illegible]is locum habent in tali commenda: [illegible] perpetu[illegible] & ibi reſpondet Gomeſi. ad ea, quæ in contrarium adducebantur,

tur, quod procedunt in commenda temporali, quia illa nõ di-
citur verus nec proprius titulus, & talis commendatarius tem-
2 poralis ſolum videtur † quidam cuſtos ſeu adminiſtrator ha-
bens legitimam adminiſtrationem: de quo late per Roman. in
conſil. 35 . & ſic clare vult Gomeſi. quod appellatione collatio-
nis nõ venit commenda temporalis, & quod diſpoſita in ha-
bente titulum collationis, locum non habeant in commenda-
tario temporali. Idem clariſſime voluit Rom. in *d. conſ.* 350 *col.* 2.
poſt medium. Itaque licet in mandato Vicarii, detur poteſtas con-
ferendi beneficia quæcunque ſecularia & regularia, non ta-
men venit poteſtas commendandi, quia aliud eſt conferre, ali-
ud commendare. Et ſi dicatur, commenda temporalis videtur
minus odioſa, quam perpetua. *d. c. nemo electus. libro* 6. reſpondeo
quod argumentum procedit in commenda proprie, per quam
plene non prouidetur beneficio, & qua ſtante, beneficiũ ſem-
per dicitur vacare: ſecus in commenda perpetua habente vim
tituli & collationis, quia illa eſt fauorabilior temporali, cum
per eam ceſſet vacatio. ¶ Amplius dico, ſi in mandato Vica-
riatus data eſſet poteſtas prouidendi & diſponendi de benefi-
ciis, adhuc nõ veniret ius commendandi, quia intelligi debent
illa verba de prouiſione & diſpoſitione plenaria, non de com-
menda per quam temporaliter tantum prouidetur, ita Rom.
in *d. conſil.* 350. *column.* 2. *poſt medium.* ¶ Itaque aut vult iſte Vica-
rius potuiſſe commendare prioratum, de quo agitur ex diſpo-
ſitione iuris communis, & non poteſt, quia de iure communi
diſpoſitio beneficiorum voluntaria ad eum nullo modo perti-
net *d. c. fin. de offic. Vicarii. lib.* 6. Aut prætendit id ſibi licere, ex for-
ma mandati Vicariatus, & non poteſt commendare, niſi de
commendando expreſſe dictum ſit, quia diuerſa ſunt conferre
& commendare. Aut prætendit ius commendandi per mo-
dum extenſionis, quaſi ius conferendi extendatur ad ius com-
3 mendandi, & ſimiliter non poteſt, quia † extenſio nõ fit ad ca-
ſum, in quo non militat eadem ratio *l. illud ff. ad legem Aquil. l. à Ti-
tio ff. de verborum oblig. & l. Iulianus. §. hoc cap. ff. de ritu nupt. cap. ſi. de transl.
præl. cum ſimil.* ſed non eſt eadem ratio in commendando,
quæ eſt in conferendo, quia ius commendandi dicitur odio-
ſum & præiudiciale eccleſiæ, vt ſupra probauimus, ius vero
conferendi dicitur fauorabile, ne vacent eccleſiæ. *capit. quam ſit.
de elect. lib.* 6. ſed de fauore ad odium non valet argumentum
nec talis extenſio poteſt. *l. cum quidam. ff. de liberis & poſthum. regul.
odioſa. lib.* 6. & ibi reperitur extenſionem fieri de collatione ad
commendam, illud eſt in commenda perpetua & plenaria, per
quam idem effectus reſultat, atq; ex collatione, ſecus in com-
menda temporali, vbi cauſatur pernicies eccleſiarum, vt ſupra
viſum eſt. ¶ Infertur ex præmiſſis, quod Florii nullum ius ha-
buit virtute aſſertæ commendæ, ob id ex iure Florii Molaris
venire non poteſt. ¶ Videamus modo de ſecundo dubio, po-
ſito & non conceſſo commenda Florii per ex Menſes tene-
tet, an veniat [illegible] facta Molaris per reſignationem ipſius
Florii per illa verba conferimus & prouidemus. Breuiter pu-
to, quod ſic, quia Molaris erat diſpenſatus ad commendas per-
petuas in beneficiis regularibus, ſed vbi agitur de commenda
perpetua, appellatione prouiſionis venit commenda, quia ap-
pellatione prouiſionis venit omnis modus, per quem de iure
prouiſio eccleſiæ fieri poteſt. *gloſſa in clem. conceſſa. in verbo prouiſionis.
de elect.* ſed per commendam prouidetur eccleſiæ, ergo, &c.
Sed diceret aliquis, vbi fit mentio quod prouiſio debet intelligi
de prouiſione plena, ſed per commendam non plene prouide-
tur eccleſiæ, ergo, &c. Et ita arguit Roman. *in d. conſ.* 350. *colum.* 2.
poſt prin. licet & ſic Roman. nihil alleget, bene facit text. *in l. ſi te
ſolum ff. de hered. inſtit.* vbi quod præualet diſpoſitio quæ pleni-
or eſt. Ad idem text. *in §. ſed quoties inſtitut. de iure natur. gen. &
ciuil.* vbi [illegible] debent intelligi de potentiori, verbum i-
gitur prouidemus videtur intelligendum de prouiſione ple-
na & potentiori, non in commenda. ¶ Ad iſtud reſpondeo
multis modis. Primo, quod uno verbum † prouidemus, de-
4 bet intelligi de prouiſione minus plena per viam commendæ,
vt aliquid operetur, quia de plena prouiſione iam dictum
fuerat in verbo conferimus *argum. l. ſi quando ff. de leg.* 1. & quod
not. Bal. in *Rubr. C. de contrah. empt. in nona quæſt.* ¶ Secundo reſpon-
deo, quod argumentum procederet in commenda temporali,
per quam beneficio non plene prouidetur, ſecus in perpetua,
per quam fit plena prouiſio: & ita voluit Gomeſius *in d. reg.
cancella. de triennali in* 5. *quæſt. pag.* 690. *& pagin.* 695. *in fin.* poſt Mo-
dern. *in tractat. reſeruationis. in* 3. *quæſt. prin.* ¶ Tertio reſpondeo,
quod in iſta collatione refertur diſpenſatio ipſius Molaris, &
fit collatio & prouiſio ipſi Molari authoritate apoſtolica diſ-
penſato, ergo intelligitur facta collatio & prouiſio ſecundum
naturam ipſius diſpenſationis. *l. ſi vno. in prin. ff. locati. l. ſi oleo. C. cod.
tit. cum ſimil.* ſimiliter cum in collatione & prouiſione fiat men-
tio diſpenſationis, cenſetur facta collatio & prouiſio ſecundũ
formam ipſius diſpenſationis & ſic in commendam. *l. penult.* v-
bi Bart. *C. de iure deliber.* vbi quando in diſpoſitione fit mentio a-
licuius qualitatis, cenſetur actus factus tanquam ex illa quali-
tate & illius contemplatione. puta, ſi in relicto filii fit mentio
patriæ poteſtatis, cenſetur relictum contemplatione patris: ſi-
militer ſi actum faciens faciat mentionem, quod eſt heres, cẽ-
ſetur facere tanquam heres, ita Abb. in *conſil.* 115. *colum.* 2. *lib.* 2. ſi-
militer qui contrahit cum herede, videtur contrahere eo re-
ſpectu & ea contemplatione, quod ſit heres. *l. ſi propon. &* §. 1 *ff. de
inoffi. teſtam.* ¶ Quarto reſpondeo, poſito citra præiudicium ve-
ritatis, illa verba conferimus & prouidemus, de propria ſigni-
ficatione † non conuenirent commendæ perpetuæ, tamen 5
impropriari debent vt actus ſuſtineatur *d. l. ſi vno in prin. ff. loca. d. l.
ſi oleo C. cod. tit. l. ſi ſtipulatus. in prin. ff. de vſuris l. inſulam. ff. de præſcript. ver-
bis. c. conſtitutus vbi glo. in verſ. rata. de religio. domibus.* Alexan. in *conſ.* 44.
Viſis & ponderatis col. 5. *verſ. item dato quod inſtrumen. lib.* 4. *& in conſ.* 55.
col. 2. *verſ. & plus eſt quia etiam verba. lib* 7. Soc. in *l.* 2 *col.* 8. *verſ.* 2. *conclu-
ſio. ff. de vulg.* Dec. in *Rubr. extra. de probatio. colu.* 2. *in fi.* Quod procedit
etiam in materia odioſa & ſtricti iuris, in qua toleratur hæc im-
propriatione actus corruat. *l. ſi ſtipulatus fuero per te ff. de verb. oblig. c.
ſi ſententia de ſenten. excomm. lib.* 6. Abb. in *conſ.* 86 *colu.* 2. *lib.* 2. ideo fit
impropriatio in verbis ſententiæ, ne illa corruat. *gl. in l. & puto.* §.
1. *ff. famil. erciſc.* quam dicit ſing. Bal. in *c. cum contingit. de dolo & con-
tum. in c. licet. de transla. prælat. & in conſ.* 516. *Caſus talis eſt, cum quidam
Lanfrancus. in fi. lib* 5. Soc. in *l. quoties.* 2. *ff. de rebus dubiis.* imo intelligi
debent verba largiſſimo modo, & omni meliori modo quo
fieri poteſt, vt actus valeat. Abb. in *conſ.* 63. *colum.* 6. *lib.* & infini-
ta id genus ſimilia cumulare poſſem. ſed non expedit, ideo de-
berent verba illa, conferimus & prouidemus, intelligi. ſcilicet
per viam commendæ vt actus ſuſtineatur, nec dicendum eſt
quod intentio prouidentis fuerit conferre & prouidere per vi-
am alterius tituli, ex quo actus vitiaretur. *l. miles qui deſtinauerat.
ff. de teſtam. milit.* ¶ Quinto reſpondeo, negari non poteſt, quin
multi ſint modi per quos prouideri poteſt de beneficio puta
viam collationis, inſtitutionis, electionis, commendationis,
&c. modo quando actus qui geritur poteſt pluribus modis cõ-
uenire, ſuſtinetur ex eo capite, ex quo ſuſtineri poteſt; quando
enim ſimpliciter quid agitur, nec reſtringit quis ſe ad certum
modum, aut caput, valet actus prout valere poteſt, quia nemo
cenſetur eligere viam ad impugnandum eius iudicium. ita [illegible]
in *conſ.* 184. *Dominus Raymutius. circa fi. lib.* 1. Corn. in *conſ.* 2 . *colu.*
poſt med. lib 4. dummodo enim non reſtringat ſe quis ad [illegible]
cauſam, ſuſtinetur actus ex cauſa ex qua ſuſtineri poteſt. Paul.
de Caſtro in *conſ.* 84 *Viſa dicta facti narratione & his quæ coproſe. col.* 3. *cir-
ca med. verſ. aduertendum tamen eſt. & in conſ.* 93. *Viſo dicto teſtam. in* [illegible] *co-
lu.* 3. *verſ. ſed in caſu noſtro. lib.* 1. Sed in caſu noſtro Vicarius non ſe
reſtrinxit ad certum modum prouidendi, imo ſimpliciter di-
xit conferimus & prouidemus, ergo intelligi debent verba de
illa prouiſione ex qua actus ſuſtineri poſſit, & ſine dubio iſtud
videtur procedere faciendo mentionem de diſpenſatione,
quia videtur voluiſſe prouidere ſecundum formam ipſius diſ-
penſationis per ſupra dicta, alias quorſum attinebat de tali diſ-
penſatione mentionem facere. ¶ Sexto † reſpondeo quod a- 6
ctus qui ſequitur, præſumitur fieri ex titulo & cauſa præceden-
ti. *l. quedam mulier. ff. de rei vendica. l.* 2. *C. de acquir. poſſ.* a primordio e-
nim tituli poſterior formatur euentus *l.* 1. *circa fi. C. de impo. lucra.
deſcript. lib.* 10. Et iſtud eſt, quod dicitur, talia eſſe ſubiecta, qualia
prædicata demonſtrant. *l. ſi defenſor ff. de interrog. actio l.* 3. vbi Bart. *ff.
de fundo inſtr. c. inter dilectos. verſ. cæterum. de fide inſtr.* modo cum Mola-
ris capax non eſſet beneficii regularis, cum ob id diſpenſatio-
nem obtinuerit per viam commendæ & de ea mentio facta ſit
in ſua prouiſione, præſumitur facta prouiſio ex cauſa ipſius
diſpenſationis præcedentis, & ſic ex cauſa commendæ, non ex
alia. Aliis etiam rationibus & argumentis comprobari poſſet i-
ſta concluſio, ſed non expedit. ¶ Venio ad tertium dubium, an
talis commenda potuerit reuocari per prælatum & capitulum:
videretur dicendum prima fronte, quod ſic: nam commenda-
tarius debet curare diligenter, vt monaſterium legitimum ſibi
prælatum eligat, quod ſi per annum in commenda perſeuerans

hoc non egerit, iure commendæ primatur. *c. conſtitutum. 7. q. 1. & ibidem. & Cathanienſis 61. diſt.* profecto ſic [illegible] commenda[illegible] reuocari non po[illegible], fruſtra agerent de electione facien[illegible] per prælatum. ſat enim eſſet de prælato commendatario. ¶ Secundo quod commendatarius reuocari po[illegible]ſit, etiam in[illegible] & non vocatus, tra[illegible] Lapus *in c. nemo de electione de elect. lib. 6.* vbi ſi capitulum ſede [illegible]acante deputet commendatarium, poterit nouus Epiſcopus talem commendatarium reuocare eo inuito, & non vocato, ſequitur Felin. *in c. ex. 2. in ſi. olim 2. colum. pen. de maior. & obedien.* ¶ Sed præm[illegible]iſſis non obſtantibus, cont[illegible] puto de iure [illegible] nus. & quid [illegible] in [illegible] caſu noſtro [illegible] quo agitur de commendatario perpetuo, re[illegible] ſine dubio, quia talis commendatarius perpetuu[illegible], dici[illegible] verus prælatus habens titulum, & in eo habent locum d[illegible] in vero præl[illegible]to: ergo ſicut prælat[illegible] verus reuocari non po[illegible] ne[illegible] [illegible]ſa ſaltem per inferiorem a Papa vt habetur *in [illegible] quæ in E[illegible] ſiarum de conſtit.* ita nec talis commendatarius. ¶ Secundo etiam quod ageretu[illegible] de commenda[illegible] temporali, a[illegible] illuc idem [illegible] quod reuocari non poſſit *glo. in d. c. nemo de electio. lib. 6.* [illegible] *in conſ. [illegible] colum. 3.* ¶ Solum ſup[illegible] reſt, ad contr[illegible] [illegible] ex quorum confutatione clariſſima fiet quæli[illegible] itaq; non obſtat primum argumentum, quod dur[illegible] commenda prælatus el[illegible] poteſt & debet, & quod talem ele[illegible]onem commendatari[illegible] ipſe debet diligent[illegible] procurare, quia reſpondeo, quod [illegible] argumentum in commendatario: qui deputatur [illegible] vtilitatem eccleſiæ, pro eius cuſtodia & cura, quamdiu p[illegible] de [illegible] de vero & [illegible] prælato, & qui commendata[illegible] [illegible] actus ſuos, ſeu dicitur ſimplex cuſtos & depoſitar[illegible], vt habetur per S[illegible] in *c. ſi conſtiterit de accuſa.* Rom. la[illegible] *in d. conſ.* [illegible] commendantis poteſt reuocari [illegible] cuſtodiæ: ſecus in cõmendatario deputato etiam a[illegible] ius commendatarii, vt faciat fructus ſuos, vel [illegible] quia talis [illegible] non poteſt. Ita declarat Rom *in d. c.* [illegible] *fin.* Cor[illegible] *in conſ.* [illegible] 6 *colum. fin. lib. 3.* ſed [illegible] de molari[illegible] de commen[illegible] vtilitatem ipſius Molar[illegible], ergo &c. Amp[illegible] gl. *in d. c. nemo de elect. lib. 6.* loquitur in commendatario quia [illegible] facit fructus ſuos, & tamen valet, quod reuocari non poſſit. ¶ Nõ obſtat [illegible] quod commendatarius deputatus per capitulum ſede vacante poteſt reuocari per nouum Epiſcopum, quia reſpondeo eodem modo, quod illa commenda [illegible] per capitulum, per modum prouiſionis, quamdiu [illegible] & [illegible] præiudicium [illegible] futuri epiſcopi: ideo creato epiſco[illegible] per ipſum epiſcopum reuocari cuius iuribus capitulum d[illegible]rogare noluit neq; po[illegible]it. Ita loquitur Lapus *in d. c. nemo.* & [illegible] *in d. c. ex. 2. olim. col. pen. de maior. & obed.* Sed non ſumus in caſu di[illegible], habente rationem diuerſam: quia facta eſt commenda non per modum prouiſionis, nec ſolum ad vtilitatem [illegible] [illegible] eccleſiæ, ſed etiam ob cauſam ipſius commend[illegible]. ¶ [illegible] præmiſſis apparet cauſam domini Emæ ſolum defendi & fundari ex dictis in pri[illegible] dubio & eadem [illegible] reſpondeo, ſalu[illegible] iudicio. Sauiliani. 17. Iulii. M D X L V I. Aymo Crauetta ex Sauiliano. I. V. D.

SVMMARIA.

1 *Bona alienata vendicari non poſſunt, viuente matre, quæ alienauit.*

2 *Exmmrus ſuperueniens informatus non debet actum quo effectum [illegible] ſit.*

3 *Verb[illegible] legis permittentis vendicationem bonorum liberis primi matrimonii, debent intelligi de vendicatione perpetua & effectuali, quæ reuocari non poſſit.*

CONSILIVM CCLXXXV.

Pro ſpect. artium & medicinæ Doctore domino Dominico Bucci à Carmagnola contra ſpect. dominam Margaritam de Bondonis vxorem ſpect. Aymonis Martini Iuriſconſulti, ex oppido Villafrancha.

DIVINO ſubſidio ex corde poſtulato. Scripſi antehac libellum pro ſpe. domino Dominic[illegible] Bucc[illegible] a Carmagnol[illegible] artium & med[illegible] doctore contr[illegible] ſpec. dominam Margaritam de Bondonis ſuper materia *l. fœminæ. C. de ſecund. nupt.* an [illegible] domina Margarita [illegible] domin[illegible] Ann[illegible] Bu[illegible] ex primo matrimonio potuerit vendi[illegible] [illegible] eidem domnæ Annæ per nodo [illegible] Ioannem de Bond[illegible] cuius prim[illegible] maritum contra memoratum dominum [illegible] Buccu[illegible] emptorem dictorum bonorũ viuente adhuc [illegible] domina Anna. Quæ pſa enim [illegible] & [illegible] magnificum quondam [illegible] per cauſæ patronos [illegible], per magnificum quond[illegible] dominum Lodouicum Vicemercatum & me pro pa[illegible] dicti d[illegible] Domini[illegible], & [illegible] quondam dominu[illegible] Bern[illegible] Vicari[illegible] [illegible]chionalem ſecum aſſ[illegible] ſpe. [illegible] Aymone Marino ro dictæ dominæ Margar[illegible], & tandem pronunciata ſ[illegible] tenti[illegible] abſolutionam [illegible] ante re[illegible] domini Domin[illegible] ne dicit in dubium reuocari iuſti[illegible] d. ſenten[illegible] gitur vt animi indicium [illegible] commen[illegible] nihil di[illegible] priori ſententia, ſed cum [illegible] & ſplend[illegible] guerimus ad parte[illegible]. Diſpu[illegible] & opp[illegible] [illegible] ius oſtendimus *l. ſin. §. [illegible] ff. [illegible] l. 1. §. [illegible] ff. de [illegible] l. diuus ff. de [illegible] l. Oſſilium ff. de leg.* [illegible] ſplendorem *ſin 13. q. [illegible] c. inter dilectos. de fide in[illegible]* [illegible] enim & [illegible] collationib[illegible] frequen[illegible] literi [illegible] *[illegible] 23.* quia nonnunquam & ferro vi[illegible] in aper[illegible] per co[illegible] [illegible] Bal. *in l. priuil. ſoluto. 6. verſic. [illegible] de imp. [illegible] C. de [illegible]* ¶ [illegible] magis dolent [illegible] fortius cõre[illegible] magis con[illegible]ritur & [illegible] ult[illegible] in lucem progreditur. Pau[illegible] de Ca[illegible] *in conſ. 23. Sole aromata [illegible] primo. lib. 1.* [illegible] oppoſit[illegible] [illegible] dum Phil[illegible] phum Paul. de Caſt. *in conſ. 444. [illegible] commendatarius conſ. 2* [illegible] Corn. *in conſ. 3 in prin. [illegible] lib.* ¶ V[illegible] terur igitur [illegible] ndum pr[illegible] fronte locum eſſe vendi[illegible] bonorum etiam ante mo[illegible], quæ [illegible] ſunt, prout in terminis voluit Bal. *in d. l. fœminæ [illegible] 1. ff. & [illegible] generaliter. § in hu. C. eod. tit. de ſecund. nup.* mouetur Bald. quia hodie [illegible] authentico [illegible], mulier de [illegible] vſufruct[illegible], & dominium [illegible] bon[illegible] [illegible] in liberos pri[illegible] matrimonii, ergo ſi mulier [illegible] vſufru[illegible] ſum fructum [illegible] & conſolidatur cum proprietate. [illegible] *[illegible] vſufru. l.* & [illegible] dominium [illegible] apud liberos primi matrimo[illegible], ſi [illegible] poterunt vendicare quod Bal. dictum ſimpliciter [illegible] Capra *in conſ.* [illegible] idem [illegible] *conſ. 46. col.* [illegible] *med. verſ. & cum po[illegible]* [illegible] vbi [illegible] quod maxi[illegible] pro[illegible] quando [illegible] eſſet, nu[illegible] po[illegible] ſſorem bonorum. [illegible] tam dictum Bald. & quem idem Capra *in conſ. [illegible] 3. volum. [illegible]* ¶ Sed præmiſſis [illegible] non obſtantibus, quæ vere obſtare non [illegible] tent. contra[illegible] de iure verius. quod imo talia † bona [illegible] lienata ver[illegible] ſtinc, viuente matre, quæ ali[illegible]: & iſta concluſio [illegible] batur per textum *in d. [illegible] generaliter §. itaque d. fœmina. C.* [illegible] Bal. [illegible] cum de hoc [illegible] *l. [illegible] eſt dubitandum. l. ancilla. C. de furtis.* & ceſſare d[illegible] glo[illegible] Bal. [illegible] habemus [illegible] *l. continuus. § cum ita. ff. de verborum oblig. & l. ille aut ille. § cum in verbis ff. de leg. 3. glo. in l. [illegible] ff. de offic. pr[illegible] Bal. [illegible] conſ. 4[illegible] [illegible] lib. 3.* ¶ Vnum etiã difficultas conſiſtit in reſpondendo ad argumentum Bald. quod [illegible] *l. generaliter. § ita [illegible] defuncto.* procedit de iure codici[illegible], ſecus hodie de iure authentico [illegible]. Quia reſpondeo, quod argumentum poſſet procedere, quando [illegible] authen[illegible] dominium talium bonorum pure & ſimpliciter transfer[illegible] in liberos primi matrimonii, ſolo vſu[illegible] manente apud vxorem, transeuntem ad ſecunda vota, ſ[illegible] non eſt, qu[illegible] dominium non omnino & ſimpliciter tran[illegible]ertur ad [illegible] primi matrimonii, ſed conditionaliter [illegible] ſup[illegible] matri[illegible], quia ipſis premo[illegible] entibus matri reman[illegible] [illegible] *§ [illegible] authen. de nupt.* Itaque cum liberi primi matrimonii non habeant dominium talium bonorum, niſi ſub con[illegible] matri [illegible] monatur, ſine dubio ante euentum conditioni[illegible], matre adhuc viuente a[illegible] non poſſunt. *l. cedere diem. ff. de verborum ſignifi. l. hæc venditio in princip. ff. de contra. empt. l. [illegible] & l. qui here[illegible] ff. de condition. & demonſt. [illegible]* ¶ Quod aute[illegible] tale dominium [illegible] [illegible] non ſit [illegible] probatur, quia non fit ipſo iure [illegible] [illegible] tranſiens ad ſecunda vota [illegible] *§. qu[illegible] nutriendis*. ſed tempus mortis impo[illegible] conditio[illegible] quan do aliquid debetur alicui vel ad eum pertinent in tempus mor[illegible] alterius [illegible] bet[illegible] [illegible] conatur. *l. heres meus. ff. de condition. & demonſtr. l. quicunque [illegible] ff. de ve[illegible] obligat. [illegible] heres ff. qu[illegible] dies leg. ced.* ¶ Secund[illegible] contra Ba[illegible] addi[illegible] natu[illegible] prohibiti[illegible] legis & teſtatoris æquiparant *d. ſponſæ in authent. de nupt.* late Scriben. *in l. ſilium [illegible] §. [illegible] de [illegible]* dit diſpo[illegible] teſtatori[illegible] nanda eſt conditionalis, ſi hæc [illegible] alienatio pendente

teneat alienatio, nec bona poſſunt vendicari pendente conditione, *l. 1. §. ſin autem ſub conditione. C. com. de leg.* ergo idem in prohibitione legis. ¶ Tertio contra Bal. adduco textum *in §. ſi vero expectet in auth. de nupt.* vbi quod pœnæ tranſeuntium ad ſecunda vota, ceſſant, non extantibus liberis primi matrimonii quod procedit ſiue non extent liberi de tempore ſecundi matrimonii, ſiue poſt deſinant eſſe. *auth. ſed & ſi quis. C. de ſecund. nup.* In quo tex. dicitur quod liberis præmorientibus confirmatur alienatio, ſi alienatio confirmatur, ergo præſupponitur quod alienatio reuocari non debet quamdiu viuit parens tranſiens ad ſecunda vota & alienans, quia ſi reuocari poſſet, iam non confirmaretur alienatio quæ reuocata ſit, ſed magis diceret text. quod reuocatio facta retractari debet. ¶ Quarto contra Bald. adduco argumentum ab abſurdo, ſi vera ſit opinio Bal. oporteret neceſſario dicere, quod præmortuis liberis ante matrem tranſeuntem ad ſecunda vota, neceſſe ſit matri agere ad retractationem vendi[...] totam per [...], ex quo mortuis liberis confirmatur alienatio, ſed hoc videtur abſurdū, quod lex voluerit permittere [...] primi matrimonii vendicationem bonorum retractabilem, ipſis filiis præmortuis, cum reuocari non debeat,
a quod ab initio legitime geſtum eſt. † Euentus enim ſuperueniens infirmare non debet actum qui effectum ſortitus ſit *l. nec enim. ff. de iti. actuque priua. l. [...]. C. de admi. tuto. l. donationes. C. de dona inter virum & vxorem. l. quæ fuere.* vbi Bart *ff. de ſtatu. homi. l. qui in poteſtate §. ſi. ff. de teſt. cum ſimi.* Imo magis honeſtum & iuridicū eſt, quod ſtet in ſuſpenſo alienatio, quam quod ſtatim retractatur & deinde poſt retractationem ad firmitatem iterum redeat. ¶ Quinto contra Bal. pondero iterum text. *in d. auth. ſed & ſi quis.* dum dicit, quod liberis præmortuis confirmatur alienatio: qui, te[...] per verba præſentis temporis, ergo ipſo iure firma fit alienatio: verba enim præſentis temporis important ipſo iure. *el in l. [...]nali. C. de iuriſd. omn. iud.* Bart. *in l. ſub. [...] §. ſane. C. de ſacro ſanct. eccl.* Iaſon *in l. manifeſta. colu. ſi. ff. de iureiur.* ſed ſi ita alienatio poſſit reuocari in vita alienantis, liberis præmortuis, non fieret confirmatio ipſo iure, imo neceſſe eſſet agere contra liberos primi matrimonii aut habentes cauſam ab eis, & neceſſaria eſſet ſententia itaque dum confirmat lex talem alienationem neceſſario præſupponit quod interim reuocari non poſſit alienatio. ¶ Sexto contra Bald. tertio loco pondero illud verbum confirmantur: ſi enim in vita parentis alienatio reuocari poſſet per liberos primi matrimonii, eis mortuis ante parentem alienantem iam non confirmaretur alienatio, ſed de nouo alienata [...] tenerentur in parentem, aut habentes cauſam ab eo: dicit enim ſunt confirmare, & de nouo dare, vt habetur *in l. & quia [...] omnium iud.* natura enim confirmationis non eſt aliquid de nouo d[...] *capit. inter dilectos §. porro ff. de inſtrum.* Oldra. *in con. [...] 4. [...] priuilegio. in fin.* ¶ Septimo ſub authoritate legis decipi non debet. *l. 2. C. de his, qui ve[...] atat. impe.* ſed ſi vendicari poſſint bona in vita parentis alienantis, emptores, qui illa emerunt à liberis primi matrimonii, eis præmortuis remanerent
3 decepti & cogerentur bona reſtituere. ¶ † Octauo verba legis permittentis vendicationem talium bonorum liberis primi matrimonii debent intelligi de vendicatione perpetua & effectuali, quæ reuocari non poſſit. Abba. *in conſilio 69. volumine 1. poſt medium lib. 1.* vbi quod diſpoſitio legis vel ſtatuti intelligi debet, vt habeat effectum permanentem, per tex. *in l. 1. §. 2.* vbi Dec. *ff. q[...] verſ. 4. Melchion. 1 queſt. 1. §. hæc autem verba. de pœnitent. diſt. 1.* ſi [...] ligendo, quod vendicare poſſint bona in vita parentis alienantis, talis vendicatio non erit perpetua nec effectum habens permanentem, cum reuocari poſſit filiis præmortuis, itaque vt intelligatur tex. de vendicatione effectuali perpetua & permanente, neceſſario dicendum eſt, quod vendicari poſſint bona poſt mortem alienantis, & non ante: quod ipſum vnicum fundamentum videtur mihi naturale, reale, & plenum, equitatis, ſolum ſufficiens ad victoriam cauſæ. ¶ Nono contra Bal. qui ſe fundat ſuper iure authen. quod ius codicis videatur correctum per ius authenticorum, dico, quod correctio induci non debet niſi expreſſe dicatur *l. ſancimus. C. de teſtam. l. præcipimus in fin. C. de app[...]el.* vbi Bartolus *§. tribus. in authent. quibus mod. natu. effic. ſu[...]* [...] debet correctio per ſubauditos intellectus. *glo. in 2. capit. [...] §. quod ſi p[...] de elect. libro ſexto.* ſed nullus textus inuenitur in authenticis dicens expreſſe, quod vendicari poſſint [...] bona in vita parentis alienantis, ergo, &c. ¶ Decimo hæc [...] materia pœnalis & priuationis, quod mulier priuetur [...]bus ſuis ſeu iure, quod habet in bonis relictis a primo viro, omnis enim priuatio dicitur pœna. *l. 1. C. de his, qui a pœna nomin.* Iaſo. *in l. ſi inſulam colu. 11. ff. de verborum obligat. & in l. venia. col. quarta. [...] de in ius vocan.* ſed pœna priuationis imponi non debet niſi lex expreſſe dicat. *§. cum igitur. in auth. de non elig. ſecund. nub. gloſſ. in cap. ſi. de iure patro. cum ſimil.* [...] per Modern. *in l. 1. column. penultim. C. de tranſac.* & alibi ſæpiſſime Doctor. ſed nulla lex inuenitur aut allegatur per Baldum etiam iuris nouiſſimi, quæ dicat reuocari poſſe talem alienationem, etiam in vita parentis alienationis, ergo, &c. ¶ Vndecimo contra Baldum videtur text. clariſſimi *authen. [...]rum. in d. §. quoniam infirmat. in auth. de nupt.* qui text. venit ad declarationem præcedentium & ſic declarat ſextus *in d. §. ſi vero expectet.* & diſtinguit, quod aut liberi ſuperſunt prioris matrimonii, & tunc infirma omnino manet alienatio, aut præmoritur & rata fit. Poſtea in fin. ſubdit text. quod alienatio manet in ſuſpenſo, ſequentibus committenda fortunis aut perfecte ab initio infirmanda alienatione aut perfecte valente. Quæ ipſa verba iudicio meo clariora non poſſent. & vellem quod Baldus, qui ex capite ſuo multas & ipſas ſubditas deciſiones audacter nimium attulit, reſpondiſſet ad iſtos textus, non etiam in re tam graui tam leuiter decidere auſus ſit, arguendo ex generalibus, omiſſis particularibus, imo & ipſa generalia non ad integrum conſiderando. ¶ Et hic proprie verificatur dictum Ant. de But *in c. conſultationibus. colum. 1. de iure patro.* vbi quod Bald. aliquando locutus eſt ex ſuo capite ſine intellectu: ſic etiam Cur. ſenior *in conſ. 77 colu. 2. circa med.* referendo illud dictum Ant. de But. dicit quod Bald. ſæpenumero loquitur ex ſuo capite ſine iure. Idem dicit Deci. *in conſ. 6[...]0 colu. 3. poſt med.* Vincent. [...] *inter conſi. Curtii ſenioris, in conſi. 1[...]. colu. 3. ante med.* Cæterum enim Bal. continue voluendo itur ſicut auis in aere. ſecundum Paul. de Caſt. locum Bald. quem refert & ſequitur Alex. *in d. in conſi. 135. Percrudelis. column. 2. in ſi. lib. 4.* ideo in quocunque diſficili articulo ſolet Bal. variare repetit Iaſ. *in l. ſin. colum. 10. numer. 6[...]. C. [...] vere emptor.* ¶ Duodecimo vbi quispiam authoritate mouetur magis quam ratione, nolit Bal. reprobare videat, eandem opin. contra Bal. ten[...] Soci. *in conſil. 54. colum. 8. in pri[...] lib. [...]* poſt Sali. *in l. ſi quis priori. §. nullo. C. de ſecund. nupt.* Idem tenet Rip. *in d. l. fœminæ. nu. in fin. C. de ſecund. nupt. per text. in §. ſed quod, an tertium. & in authent. de nupt.* ponderando verba vendic[...] bunt & [...] erit, &c. quæ ſunt futuri temporis, quaſi dicat non ſtatim vendicabunt, ſed demum præmortuo parente. Eandem opin. ſenſit Cornel. *in conſi. 319 column. ſi. libr. 3.* dum dicit, quod, ſi mulier det in dotem talia bona, alienatio eſt nulla reſpectu proprietatis, ergo tenet reſpectu vſusfructus, & ſic vult & ſ[...] not Corn. quod viuente vxore, filii agere non poſſint. Imo fortius voluit Roma. *in conſilio 182.* quod adeo valet talis alienatio, vt emptor moleſtari non poſſit, etiam mortua [...] matre, ſed emendari debeat damnū filiis alienantis ex ſubſtantia [...] alienantis: quod tamen Roman. dictum non indiſtincte placet, imo videtur, quod bona immobilia vendicari poſſint mortu[...] alien[...] &c. ¶ Ex præmiſſis appaæt hanc partem [...] contra Bal. [...] eſſe & comprobatam optimis efficaciſſimiſque rationibus & authoritatibus, & ita iudicarem, ſi cauſa mihi de[...]nda eſſet: eſt enim humanior & æquior opinio. ¶ Poſtremo conſidero, quod hic ſumus extra terminos *d. l. fœminæ* quæ non procedit in his, quæ habuiſſet à coniuge titulo oneroſo [...] *in authen. ni donatione. in fin. C. de ſecun. nupt. & in leg. hac edictali. §. hæc illud. in verſicul. deuoluenda. eo titul.* S[...] quitur Roman *in conſilio 219 columna 2. verſic. vltimo pariſiſta.* Decius *in l. 1. columna 6. in [...] 2 not. C. de ſecun. nup.* [...] iſtam gr[...] habuit vxor ex cauſa oneroſa, & pro dotibus ſuis ſcutorum ſexcentum & pro omnibus aliis iuribus quæ petere poterat à marito ab eius heredibus. ¶ Nec obſtat quod [...] ſolutū fuerint ſcuti tercentum, & quod ipſi ex vxoris recognouerit ſe debitorem de ſcutis tercentum, quia talis recognitio non nocet vxori, cuius quæſitum eſt ex confeſſione de rei intuendo. Bart & Paul. de Caſtr. *in l. pen. §. ſi vir. ff. ſolut. matr.* Alexand. *in conſilio 36. column. 1. libr. 2. & in conſilio 148. columna 1 libr. [...].* Socin. *in conſi. 179. column. 4. verſic. confirmantur poſtremo præmiſſa. libr. 2. & in conſilio 88. columna pen. in ſin libro 4.* Corn. *in conſi. 151 in 2. dubio. [...] in conſi. 2[...]9. column. ſin. libr 3. & in conſilio [...]06. libr. 4.* Bald. Nouellus *in tract. dotis in 8. parte, prim. [...] 4 [...]* quitor Neuiz. *in ſylua nuptia.* [...] *43. colu. p. ſecundam primam impreſſionem.* vbi quod ita obtinuit coram regio Senatu Mediolanum. addo Bal. *in conſ. 224 vir. [...].* Nec obſtat reſponſio partis quod Doctr. Bart. *in l. penult. §. ſi vir.* non procedit in dote profectitia cuius actio eſt communis patri & filiæ & in qua non poteſt filia agere ſine conſenſu patris. Q[...]

iſtud non procedit quando promiſſio de reſtituendo eſt facta ipſi filiæ, quia tunc actio eſt ſolius filiæ. Bar. & Doct. *in l. poſt dotem. col. 6. verſ. 4. quæro ff. ſolut. matri.* Curt. Iun. *in conſ. 152. colum. 1.* vbi quod doctr. Bart. communiter approbatur. ideo cum maritus promiſerit dotem vxori reſtituere, illa recognitio patris filiæ non nocet, conſequenter dictus vxor habere iſtud legatum ex cauſa dotis oneroſa. ¶ Similiter curandum non eſt, quod dicat pars, vxorem non feciſſe fructus ſuos propter cautionem non præſtitam de vtendo & fruendo, arbitrio boni viri, & quod petitio cautionis non eſſet neceſſaria, quia mater tunc ex tenebatur à ſeipſa petere: quia non puto, quod mater ſecundo nubens eſſet tutrix. ¶ Secundo reſpondeo, quod iſta cautio non videtur neceſſaria in vſufructu iſto legali & improprio: quod patet quia præmorientib. liberis remanent bona apud matrem pleno iure, quod non accidit in vero & proprio vſufructu: ideo dicta in vſufructu de cautione præſtanda, extendi non debent ad vſumfructum improprium. *l. ſi vero. §. de viro ff. ſolut. matri.* maxime in hac materia pœnali & odioſa *l. cum quidam.* vbi late Modern. *ff. de libe. & poſthum.* ¶ Tertio quod talis cautio non ſit neceſſaria, probatur, quia talia bona alienari poſſunt, nec reuocatur alienatio in vita alienantis, vt ſupra abunde probauimus, quod non eſſet ſi eſſet ſimplex vſusfructus: & præterea abſurdum eſſet dicere, quod emptores talium bonorum tenerentur cauere. Quarto dico, quod ex iſto capite agi debebat contra dominam Annam matrem, non contra dominum Dominicum tertium poſſeſſorem *l. 1. §. ſi heres. ff. ad Treb.* vbi late Scriben. Quinto dico, quod in omnem euentum etiam ſi ageretur contra ipſam Dominam Annam, eidem ſuccurreretur errans in iure, vt in terminis tradit Paul. de Caſt. *in conſ. 355. Ad primum dicendum, quod cum frequenter circa fi. lib. 2.* vbi quod mulier vſufructuaria quæ cautionem omiſit per errorem iuris, non ſolum lucratur fructus perceptos, ſed etiam poteſt petere fructus, quos percepit proprietarius. ¶ Reliqua, quæ opponuntur videntur mera ſomnia, ideo concludo in fauorem ipſius domini Dominici rei conuenti, pro quo etiam in dubio iudicandum *reg. fauorabiliores. ff. de reg. iur.* licet careat res omni dubitatione. Sauiliani 16. Iulii. MDXLVI.
Aymo Crauetta ex Sauiliano. I. V. D.

Svmmaria.

1 *Patruus negociatus de pecuniis communibus, tutor nepotum, tenetur communicare lucra ex tali negociatione.*

2 *Poſſunt pupilli poſt finitam ætatem pupillarem ſocietatem ratificare.*

CONSILIVM CCLXXXVI.

Pro filiis & heredibus Ludouici de Papia ex Pinerolio contra Marchiotum de Papia eorum patruum.

Divino ſubſidio ex corde poſtulato. Ludouicus & Marchiotus de Papia fratres, ex Pinerolio, ſimul habitabant & communiter negociabantur, omnia communicando ex negociatione prouenientia, deinde mortuo Ludouico, Marchiotus tutor filiorum, eiuſdem Ludouici, in pecuniis & mercib. communibus negociatus eſt, & communiter vixit cum eis vſque in tempus præſens: modo voluerunt partes venire ad diuiſionem bonorum communium, in qua diuiſione de pluribus dubitatur. ¶ Et primo, an dictus Marchiotus teneatur communicare lucra obuenta ex negociatione prædicta, mortuo Ludouico, filiis ipſius Ludouici. In quo dubio videretur dicendum prima fronte, quod non, quia inter dictos filios & Marchiotum eorum patruum nulla proponitur ſocietas in ipſa negociatione, quia non apparet quod dictus Marchiotus fuerit negociatus communi nomine. In dubio autem præſumitur quod proprio nomine fuerit negociatus *l. & magis. ff. de ſolut. l. Titium & Mæuium. §. perfectis* vbi Bar. *ff. de admin. tut.* vbi probatur hoc procedere etiam ſi negocians eſſet tutor pupilli, tradit Bart. *in d. l. Titium & Mæuium §. altero & in l. ſi patruus C. com. vtr. iudi.* Alex. *in conſ. 131. colum. 3. in prin. verſ. quoniam præſuppono potest. lib.* Dec. *in conſ. 21. ante ſi.* licet ergo licet Marchiotus negociatus eſſet communi nomine, adhuc non videretur ſocietas contracta inter eum & nepotes pupillos, quia pupillus ſocietatem expreſſe contrahere non poteſt ſine authoritate tutoris *l. vt in conditionalibus. ff. pro ſocio.* ergo multo minus tacite, ne plus operetur tacitum, quam expreſſum *l. qui ad certum. ff. locati.* & in terminis tradit Bart. *in d. l. Titium & Mæuium. § altero. & in d. l. ſi patruus* Alex. *in conſ. 149. & 1. lib. 1.* Itaque ceſſante ſocietate tacita vel expreſſa, non videtur tractandum de aliqua communicatione lucrorum. ¶ Nec obſtat quod dictus Marchiotus eſſet tutor nepotum, qui non potuit [illegible] contractum tacitæ ſocietatis præſtando authoritatem in ſa[illegible] pro. *l. 1. in pr. ff. de autho. tut.* & in terminis tradit [illegible] etr. de Vbal. *in tract. in 1. parte. col. 5.* quem refert & ſequitur Dec. *in conſ. 441. col. 2. poſt med.* ¶ Sed præmiſſis non obſtantibus contrarium puto de iure verius. quod imo dictus Marchiotus teneatur ad communicatem talium lucrorum. Primo, quia dicta negociatio poſt [illegible]tem Ludouici videtur continuata communi nomine [illegible] Marchioti & eius nepotum, ſicut fuerat communiter [illegible]ta, ex quo mortuo Ludouico communiter & ſimul habitauerunt & bona communia indiuiſa poſſederunt, prout in [illegible] ipſius Ludouici: ita Bal. *in d. l. ſi patruus col. 3. C. com. vtr. iud. arg. l. & Seruum. §. ſi vnus. ff. de nego. ge.* & quia à primordio tituli poſterior formatur euentus *l. 1. circa fi. C. de impo. lucra. deſcrip. lib. 10.* ſequitur Alex. *in d. conſ. 131. colum. 1. libr. 5.* ¶ Secundo dico quod ex quo iſte Marchiotus [1] patruus negociatus eſt de pecuniis cõmunibus & erat tutor nepotum, ſine dubio tenetur communicare lucra ex tali negociatione prouenientia *l. 1. ff. quan. ex facto tuto. l. 2. in ver. C. arbi. tute.* Bar. & Bal. *in d. l. ſi patruus col. 2. C. com. vtr. iudi.* Dec. in *ſi pecuniam in 2. no. ff. ſi cert. pet. & in con. 21. ante fi.* ¶ Tertio niſi dicamus Marchiotum negociatum communi nomine, et ad vtilitatem minorum, argueretur eo delictum, quod voluerit negociari de pecuniis alienis & pecunias alienas in vſus ſuos conuertere, nã committitur furtũ etiam iure cõmuni. *Lex communis l. interim. ff. pro ſocio. l. ſi ſocius ff. de furtis.* ideo non præſumatur ſocium voluiſſe delinquere, pecuniam cõmunem in ſolidum ſibi appropriando & traficando, dicendum eſt, quod intellexerit negociari communi nomine: & iſtud voluit Alexand. in *d. conſ. 125. colum. 3. in princip. lib. 5.* vbi quod præſumitur quis negociari proprio nomine non communi, quando nomine ſuo legitime actum facere poteſt & ſic ſine ſuſpicione delicti, ſecus ergo vult quando negociari legitime non poſſet ſuo nomine, prout in caſu noſtro, facit text. *in l. 5. ff. de dona. inter virum & vxorem* vbi vxor præſumitur acquirere de pecunia mariti, quando alias legitime & ſine ſuſpicione adulterii præſumi non poteſt, quod acquiſierit de pecunia propria. ¶ Quarto iſta quæſtio eſſet extra omnem dubitationem ſi appareret poſſet de aliquibus ſcripturis ipſius Marchioti, circa cauſam negociationis, in quibus appareret: quod etiam nepotum nomine negociaretur. *l. Neſennium ff. de neg. geſt.* Bar. *in d. l. ſi patruus. colum. 2.* ¶ Ex quibus apparet intentionem nepotum abunde eſſe iuſtificatam ſolum ſupereſt ad contraria reſpondere. Ad quæ ſatis quidẽ ex præmiſſis reſponſum apparet, ſed tamen reſpondeo in ſpecie. Et ad primum, quod Marchiotus præſumatur negociatus nomine proprio, non communi. Reſpondeo quod argumẽtum procederet, quando cœpiſſet Marchiotus negociari, mortuo Ludouico fratre, & ageretur de præſumenda noua ſocietate, ſed in caſu noſtro agitur de continuatione aut renouatione ſocietatis iam contractæ, viuo Ludouico, communi nomine, ideo mortuo Ludouico, præſumitur ſocietas continuata aut renouata eo nomine, quo fuerit contracta: quia renouatio præſumitur facta cum eiſdem qualitatibus *l. cum quæritur. §. qui impleto. ff. locati.* & in renouatione ſocietatis tradit Bald. *in d. l. ſi patruus. colum. 3. in d. l. mandatum in tertia oppo. C. mandati.* Abb. *in conſ. 87. lib. 2.* Iaſ. *in conſ. 3. colum. 2. libro 3.* & iſtud eſt quod dictum fuit ſupra in primo fundamento pro parte nepotum, quod præſumitur continuata ſocietas iuxta eius primordium. ¶ Secundo reſpondeo, quod argumentum procederet, quando præſumendo factam negociationem, nomine proprio ipſius Marchioti, ceſſaret præſumptio delicti, hic argueretur delictum in Marchioto ſi pecunias communes dicatur exercuiſſe ad commodum proprium: & maxime arguetur delictum cum eſſet Marchiotus tutor nepotum, quia prædo dicitur pecunias pupillares in proprios vſus conuertendo, Angel. Imol. & Doctor. *in l. Pomponius. §. ex facto per illum text. ff. de acquir. poſſ.* Roman. *in d. l. Pomponius. § ſed ſi legatarius.* Alexandri *in l. ſi ex ſtipulatione. ff. eod. tit. de acquir. poſſ.* [illegible] *in tex. in l. qui ſi. §. ſi tutor. ff. pro emptore l. quo ſine. ff. de neg. geſt.* [illegible] *qui repertorium. §. qui actiones & l. non exiſtimo. §. de admini. tutor.* [illegible] *Cod. de vſur. pupill.* tradit Angel. *in conſil. 90. Pro deciſione. columna prima. in fin. verſicul. 1 premitto,* vbi quod omni iure prohibitum eſt adminiſtratoribus in eorum vſus conuertere pecunias dominorum, & [illegible] conuertentes puniuntur, ſunt enim neceſſario in dolo aut in culpa, tradit etiam Socinus *in conſilio 159. columna 2. & 3. verſicul. 4. deprehenditur. & in conſilio 190. columna 2. verſicul. 4. quia ex renouatione. lib. 2.*

libr. 2. Decius in conſ. 19 . in fin. Imo talis adminiſtrator conuertens pecunias domini ad vſus proprios tenetur in duplum actione de rationibus diſtrahendis. *l. actione §. fin. ff. de tut. & ratio. diſtrahen.* per quem textum dicit Corn. *in conſ. 1. colum. 2. in fin. libro 1.* Itaque ſi dicat Marchiotus ſe negociatum de pecuniis pupillaribus nomine proprio, & ad eius vtilitatem, tenebitur in duplum minoribus, & vlterius puniri poteſt extraordinarie per fiſcum ratione doli & fraudis. ¶ Tertio reſpondeo, poſito non conceſſo, quod nomine proprio negociatus eſſet, & de hoc vere appareret, adhuc iſtud non noceret quo minus teneatur cōmunicare lucra, facta de pecuniis & bonis cōmunibus, ex quo erat tutor aut adminiſtrator ipſorum nepotum *d. l. 2. ff. quando ex facto tuto.* & dictum eſt ſupra, in ſecundo fundamento facto in fauorem nepotum. ¶ Non obſtat ſecundum argumentum, quod non potuit Marchiotus negociari communi nomine ſuo & nepotum, ex quo nepotes erant pupilli, cum quibus ſocietas contrahi non poterat, expreſſe nec tacite, quia reſpondeo mul-
2 tis modis: & primo quod potuerunt † & poſſunt ipſi pupilli poſt finitam ætatem pupillarem talem ſocietatem ratificare. Baldus *in additio. ad Bartolum. in tractat. de duobus fratri. per text. in l. ſi pupilli ff. de noua.* ſequitur Alexand. *in conſ. 49. colu. 2. verſi. ſed præmiſſis non obſtantibus. & colum. 3. in fin. verſi. & per prædicta. lib. 1.* ¶ Secundo reſpondeo, quod talis defectus ætatis in contrahenda ſocietate expreſſa vel tacita ſolum allegari poſſet per ipſos nepotes minores, non etiam per ipſum Marchiotum, quia poteſt pupillus dicere volo tenere contractum licet minus legitime geſtum in mei fauorem, & ſi contractus iſto caſu claudicare poteſt. *l. Iulianus. § ſi quis à pupillo ff. de action. empti.* Ita in terminis reſpondet Socinus *in conſ. 87. colum. 6. verſi. Nec videtur conſiderabilis at. in libro primo.* ¶ Tertio reſpondeo, quod licet contractus tacitæ ſocietatis nō teneret, tamen ſatis eſt, quod Marchiotus eſſet tutor aut curator vel adminiſtrator nepotum & lucratus fuerit de pecuniis communibus, quo caſu talia lucra debent communicari, vt no. in terminis Bar. & Bald. *in dict. leg. ſi patrium colum. 2. & dictum eſt ſupra in ſecundo fundamento facto in fauorem.* ¶ Quarto reſpondeo, quod ſi neget Marchiotus ſe negociatum communi nomine, & dicat contractum ſocietatis cum pupillis non tenere allegat turpitudinem ſuam, & puniri debet tam publice erga fiſcum, quam priuatim in duplum actione de rationibus diſtrahendis, vt ſupra dictum eſt. Ex quibus apparet diſſolutum primum dubium. ¶ Secundo dubitatur de bonis acquiſitis per Marchiotum ſuo nomine, an debeant communicari. Breuiter iſta quæſtio plus facti habet, quam iuris, ſi enim dicatur & probetur Marchiotum acquiſiuiſſe de pecuniis communibus tenebitur communicare nepotibus, ex quo erat eorum tutor aut adminiſtrator *d. l. leg. 2. ff. quando ex fact. tutor. leg. curator. Cod. arbitr. tut.* Bart. & Bald. *in d. l. ſi patrium. C. commun. vtr. iudic.* & idem Bar. *in l. ſi ex proprio. C. de rei vendicatione.* Abb. *in conſi. 94. colum. 1. verſ. ſi vero dictum palatium libro ſecundo.* Corn. *in conſ. 113. colum. 2. circa medium. verſi. nec empta ex pecunia pupillis lib. 2.* Decius *in l. ſi pecuniam in, cum ſe nota. ff. ſi cert. pet. & in conſi. 192. circa fin.* ¶ Tertio dubitatur de melioramentis factis in domo acquiſita per ipſum Marchiotum. Illud dubium dependet a ſecundo & venit acceſſorie ex eo, ſi enim domus dicatur acquiſita & meliorata de pecuniis communibus pertinet cum ſuis melioramentis ad nepotes, pro dimidia: ſi vero dicatur acquiſita & meliorata de pecuniis propriis ipſius Marchioti, in ſolidum pertinet ad ipſum Marchiotum cum nō proponatur ſocietas tacita vniuerſalis omnium bonorum, ſed in bonis communibus & negociatione illa tantum. ¶ Quarto dubitatur de bonis mobilibus, deſcriptis in inuentario dicti Marchioti, quæ ipſe Marchiotus allegat periiſſe & fuiſſe combuſta. Reſpondeo quod iſte Marchiotus tenetur pro eis rationem reddere. *l. 1. §. officio. ff. de tut. & ratio. diſtrahend.* & ſi alleget combuſtionem aut incendium ipſorum bonorū, tenetur probare, quod illa bona eſſent in domo combuſta: probatio enim debet concludere de neceſſitate. *leg. non hoc. C. vnde leg. cum ſimilib.* ſed non ſequitur, talis domus fuit incendio conſumpta, ergo bona mobilia deſcripta in inuentario erant in ipſa domo. Præterea dicitur, quod probabitur de facili per ipſos nepotes quod talia mobilia non erant in ipſo domo. ¶ Quinto dubitatur de quadam pena alienata per ipſum Marchiotum. Breuiter tenetur de ea rationem reddere, & docere de neceſſitate alienandi, & quid egerit de eius pretio alias poſſet iurari in litem contra eum *iuxta not. in leg. in actionibus. ff. de in litem iurand.* imo puniri poteſt extraordinarie tutor alienans bona pupillaria, ſine cauſa. *l. mea ff. de tut.* Ancharanus *in conſilio 330. colum. fin. circa medium.* Iaſon *in conſilio 14. colum. 4. poſt medi. in. libro tertio.* Sauili 5. Auguſti. M D. L V I. Aymo Crauetta ex Sauiliano Iuris vtriuſq; Doctor.

SVMMARIA.

1. *Fideiuſſor non poteſt condemnari de iudicatum ſoluendo, aut principaliter condemnari non poteſt.*
2. *Non admittitur ad iuramentum, vbi ſunt alia probationes delicti.*
3. *Quando tort[illegible].*
4. *Torturam præcedere non ſolum indicia, ſed etiam probationes.*
5. *Sine probatione furti, ſtare non poteſt iuramentum in litem.*
6. *Torturam adhiberi debet cum moderamine.*
Semel tortus repeti ad torturam non debet [illegible] ex nouis indiciis.

CONSILIVM CCLXXXVII.

Pro fideiuſſoribus quondam Chiglonis Becchi ex Carmagnolia, contra Michaelem Becchi ex eodem loco conſilium optatiſſimum in materia iuramenti in litem, & tortura.

DIVINO ſubſidio ex corde poſtulato. Nobilis Nicolaus Ferrax, egregii Dominicus [illegible], Petrus Loccha & Antonius de M[illegible]ia Burgenſe Carmagnolæ, extiterunt pro Chiglono Becchi, detento in arce Carmagnolæ prædicto criminis furti, de iuri ſtando, iudicio ſiſti & omne iudicatum ſoluendo quotieſcunque, quandocunque, quotiescunque, & quocunq; fuerit iudicatum tam per ipſum no. Ioannem de Cunea Marchionalem commiſſarium, quam per alium iudicem etiam appellationis, & ipſum Chiglonum repræſentare toties, quoties, &c. Deinde proceſſum fuit ad torturam contra dictum Chiglonum Becchi, qui eam conſtanter ſuſtinuit. Qua tortura ita illata inſtetit reus accuſatus ſe abſolui cum reſtitutione expenſarum, damnorum & intereſſe, & fuit commiſſa cauſa per Excellentiam Marchionalem domino Antonio Furandi. Deinde mortuo Chiglonus, quo mortuo Michael [illegible] pars ciuilis cauſam renouat per applicationem [illegible] Marchionem petendo iuramentum in litem ſibi deferri, contra fideiuſſores aut eorum heredes. Quæritur quando is, id eſt an ſit locus iuramento in litem deſiderato? ¶ In primis a conſultatione non arguendo ad partes ſed facti & iuris veritatem realiter attingendo, pono non eſſe locum tali iuramento & pro fundamento conſidero, non ſic do[illegible] non poſſe condemnari 1
fideiuſſorem de iudicatum ſoluendo, vbi reus principaliter condemnari non poſſet. *l. rei bonus ff. iudi. ſolui.* vbi quando reus non cogitur iudicium ſuſcipere, fideiuſſor etiam non tenetur. Et hoc probatur neceſſario, nam clauſula iudicatum ſolui continet tria: obligationem defendendi, ſolutionem iudicati & dolum malum abeſſe. *l. iudicatum ſolui id eſt. ff. eodem titul.* & ſic virtute huius fideiuſſionis tenetur fideiuſſor reum defendere ſine aliquo dolo, ergo ſi reum defendat & oſtendat eum non teneri, non tenebitur fideiuſſor. Quorum enim attinet reum defendere, ſi defenſio profutura non ſit, lex enim & natura nihil fruſtra operantur. *l. non cogendum §. Sabinus. ff. de procurator. l. quibus idem. ff. de verbor obligat. l. hæc ſtipulatio. §. diuus ff ſi leg. not. cauca. gl. no. in clem. 1. in verbo. virg. nituens de ſum. Trin. & fide catho.* Hinc videmus quod ſententia abſolutoria pro reo principali, non tenetur fideiuſſor de iudicatum ſoluendo. *l. 9. pen.* & ibi Angel. *ff. iud. ſolui.* Socin. *in conſ. 91. in primis lib. 4.* ¶ Item aut vtilis pars. gens experiri contra fideiuſſores de iudicatum ſoluendo ex capite defenſionis, & ſumus extra difficultatem quia fideiuſſores aut heredes eorum cauſam defenderunt & defendunt, dicentes & probantes non eſſe locum iuramento in litem, de quo infra latius dicemus. Aut volt experiri contra fideiuſſores ex capite ſolutionis iudicati. & hic expectandum eſt tempus ipſius ſententiæ, iudicati, & hic neceſſario videndum eſt, an reus condemnari debeat vel non. *l. iudicatum ſolui. ff iudi. ſolui.* & profecto abſurdum eſſet dicere exceptiones competentes principali, non prodeſſe fideiuſſori, & poſſe condemnari fideiuſſorem, vbi principalis condemnari non poſſet. *l. omnes. ff. de exceptio. l. conſtitutionib. C. de vſuris. cum ſimi.* imo fideiuſſori repetenti quod ſolui pro reo, imputatur, ſi nō ſe defendit nec oppoſuit exceptiones reo competentes. *l. ſi ſub. iuſſer. ff. mandat. Bar. in l. vt qui natura §. cum me abſente. ff. de neg. geſt.* ¶ Hoc ita præſuppoſito, quod exceptiones competentes reo competant & fideiuſſori. Dico quod ſi Chiglonus

glonus Becchi reus principalis inter viuos ageret, nõ eſſe locus iuramento in litem cõtra eum. Quod ipſum ita probatur: nam iuramentum in litem nõ defertur contra aliquẽ vt delinquentem, niſi prius conſtet de delicto: tex. eſt in *term. uer. iuramenti in litem in l. ſi quando. in verb. patefacta.* vbi Iaſon 4. *no. C. unde vi. & in c. ſi. extra quod metus cau.* modo aut vi [illegible] dicere probatum eſſe furtũ contra ipſum reum aut non: ſi dici [illegible] probatum eſſe furtum aut furti ſubſtantiam, ſed quia plene non probatur quantitas pecuniæ ſubtractæ, ſuper ea ſtari debe[illegible] iuramento partis [illegible]. *in tex. d. l. ſi quando & d. c. ſi. quod metus cau.* & duo ſunt quæ [illegible] me confundunt partis deſiderium. Primum quod [illegible] tentia torturæ lata contra reum & confirmata per Collegium Rotæ Bononienſis fuit & eſt iniuſtiſſima. Etenim ſi probatum erat reum furtum commiſiſſe, ſed ignorabatur quantitas pecuniæ ſubtractę, non erat procedendum ad torturam pro quantitate pecuniæ indicanda, ſed pręſtandum erat iuramentum in litem ſuper tali quantitate, per text. in *d. l. ſi quando & d. c. ſi. quod metus cau.* Conſtat enim quod vbi alio remedio ſubueniri [illegible] poteſt contra reum, non venitur contra eum ad torturam, [illegible] dicitur remedium ſubſidiariũ, † nec venitur ad torturam vbi ſunt aliæ probationes delicti. *c. dunm Pin. & l. edictum. ff. de quæſtio. & l. ſpontes. C. eo. tit.* Cyn. in *l. 1. C. quor. appella. non recip.* Angel. in *l. & ſi certus. ff. ad Syllan. cum ſimil.* ¶ Sed diceret aliquis iſtud quod primo conſideras, videtur contra text. in *c. 1. extra. depoſ.* vbi ſecundum intellectum Purpur. quem dedit in hac cauſa, cõſtabat de delicto, quia probatur depoſitum licet reus negaret, & tamen torquetur reus vt indicet quantitatem pecuniarum. & ſic non ceſſat tortura licet iuramento in litem locus eſſe poſſit: ſed ſalua reuerentia locuti mei Purpura. iſte intellectus videtur contra iura, quæ volunt, nõ veniri ad torturam niſi in ſubſidium. ſed vbi reus negat depoſitum & conuincitur per teſtes, videtur eſſe locus iuramento in litem, non torturæ ſuper quantitate pecuniæ depoſitæ, in odium doloſi & negantis. negando enim depoſitum committitur furtum, negans enim ſimilis eſt fraudatori & furtum committit. *l. hereditatem. §. ſi. ff. ad legem Falcid.* vbi parata ſunt, negat e bona eſſe hereditaria, & ea ſubtrahere, tradit Baldu in *conſ. 33. Sextoſent. colu. 2. poſt med. libr. 5.* negan[illegible] enim rem depoſitam retinet & contrectat rem alienam inuito domino, ergo furtum committit. *§. 1. Inſtit. de oblig. quæ ex delict. naſc.* & in negante depoſitum animo occultandi & lucrandi, quod furtum committat, eſt textus in *l. 1. §. ſola & in l. infitiando. ff. de furtis.* per denegationem enim depoſiti, iuncta retentione aut contrectatione illius, non eſt dubium furtum committi, vt per gl. & Doctor. in *l. rem quæ nobis. ff. de acqui. poſſ. ad idem tex. in l. ſi ut, cer. & in l. ſi ſeruum. C. ad. ier* ſtante igitur probatione furti, nõ eſt dubium locum eſſe iuramento in litem, ſuper probatione quantitatis rerum ſubtractarum, quia diſpoſitio *d. l. ſi quando. C. unde vi. d. c. fin. quod metus cauſ.* loquens in violentia. locum habet & in furto. Baldus in *l. hac edictali. §. interim. de pac. contra ſir.* quod dictum pro eleganti refert & ſequitur Ioannes de Ana. in *conſilio 55. quod ab ea. in ultimo dubio.* Itaque eſt intellectus ad *d. capit. 1. extra. depoſiti.* quod ibi plene conſtaret de delicto furti, per negationem & retentionem depoſiti, & quod permittatur tortura ad indicationem quantitatis pecuniarum non videtur de iure procedere quia probata furti ſubſtantia ſuper quantitate ſubtractarum, ſtandum videtur iuramento in litem, ceſſante in tortura ſubſidiaria. Sed diceret aliquis, ergo tu vis quod in *d. capitul. 1. extra depoſiti.* non conſtaret de delicto, ſed vbi delictum non conſtat, impoſſibile videtur, quod veniatur ad torturam: quia non quam procedatur contra [illegible] criminaliter, etiam ad ſolam capturam, neceſſarium [illegible] quod conſtet de delicto, puta, homicidium aut furtum eſſe commiſſum *leg. 1. §. item illud. & l. neceſſarios. § non alias. ff. ad Sy[illegible], l. ſi ut, quæ. § [illegible] de furt.* Bartol. in *l. fin. columna prima. ff. de quæ[illegible].* Bald. & Paulus de Caſt. in *authen. ſed nouo iure. C. de furtis.* An[illegible] Iuno. & A[illegible] in *l. in bona. ff. de damno infect.* ¶ Hoc argumentum valde [illegible] ipſum [illegible] omnium auditorum Rotę Bononienſis in hac cauſa, & mihi videtur ſalua eorũ pace & reuerentia, quod [illegible] non attigerunt. Reſpondeo igitur ad text. in *[illegible] depoſito.* altero de duobus modis. ¶ Primo [illegible] ibi non fuit locus iuramento [illegible] litem [illegible] poſito quod conſtaret de delicto, quia non [illegible] perſon[illegible] iuramentum deferri poſſe [illegible] quia reus ſoluendo non e[illegible] iuramentum in li[illegible] [illegible] *ff.* [illegible] hanc [illegible] Purpura, quod in *d. c. 1.* con-

ſtaret de delicto, non tamen [illegible] intellectu [illegible] latione, quod conſtito de delicto, [illegible] & indiſtincte, imo regulariter non [illegible] loc[illegible] hoc ca[illegible] do reus alias ſoluendo non [illegible], vel a [illegible] quia tũc, ne remane[illegible] actor in damno [illegible] tortura vt iudicet reus quid [illegible] de p[illegible] occultas teneat aut alius teneat: [illegible] & actor de facto infor[illegible] non [illegible] remedio ſubſidiario, ſed iuramento in [illegible] tra doloſu[illegible] ¶ Secundo [illegible] *depoſit.* plene no conſtaret de delicto, [illegible] præſumptiones, quod quædam ſunt d[illegible] per ſe ſeorſum à perſona delinquentis [illegible] ſona ipſius delinquentis, puta homi[illegible] homo occiſus, conſtat eni[illegible] de homicidio [illegible] occidentis: idem in furto quando reperitur domus [illegible] ca fracta in qua erant pecuniæ: conſtat [illegible] mus & arcæ, licet ignoretur quis id fece[illegible] vinea de nocte vindemiata [illegible] ignoret [illegible] delictis quæ de per ſe conſtare poſſunt [illegible] delinquentis fateor quod ante omnia conſ[illegible] de[illegible] cto. Etenim iniquum & abſurdum eſſe [illegible] quam homicidam, non apparente de corpo[illegible] liquem tanquam fractorem domus & [illegible] la fractura, capere aliquem tanquam [illegible] lienæ nõ apparente de tali vindemi[illegible] Qu[illegible] delicta quæ de per ſe conſiderari non poſſ[illegible] dine perſonæ delinquentis, puta, [illegible] pecuniam apud Titiu[illegible] quam mi[illegible] lo negat [illegible] ſtare poteſt de furto e negatione Titii [illegible] pud eum pecuniam depoſitam, & in iſt[illegible] videtur quod de eo conſtet per indicia aut coniecturas [illegible] procedi p[illegible] ſit contra aliquem ad capturam & torturam. Alias ſeq[illegible] quod nunquam [illegible] talib. delictis torturæ locus eſſe poſſ[illegible] plene conſtaret de delicto, fruſtra tractaretur de tort[illegible] aliter conſtare non poſſit niſi conſtito de perſona delinq[illegible] tis, & qua ratione in delictis conſiderabilib. de per ſe, non ſtante incertitudine perſonæ, circa certificationem perſo[illegible] venitur ad torturam ex indiciis coniecturis, eadem ra[illegible] verificandum delictum [illegible] ſe non conſiderabile, ſine [illegible] dine perſonæ delinque[illegible] videtur quod pro[illegible] di poſſ[illegible] ptu[illegible] & torturam ex indiciis & præſumptioni[illegible] & declarationem arbitrii eſſe [illegible] ſideretur. & ſecundum [illegible] intellectus *d. c. 1. de depoſito* [illegible] planus, quod ſi non con[illegible] de delicto depoſitar[illegible] per indici[illegible] & [illegible] permitti[illegible] tortur[illegible] dic[illegible] ſtandum pecunias depoſitas & ipſum depoſit[illegible] ſi eo in ſi conſtet de dep[illegible] & reus ſoluendo eſſet, & actori [illegible] iuramentũ in litem deferre poſſet, fruſtra tractaretur de tortura, cum eſſet locus iuramento in litem [illegible] indication[illegible] ficationem quantitatis pecuniarum ¶ [illegible] probatione eius quod primo loco conſideraui, quod ſi [illegible] iſta contra Ghiglonum [illegible] tortura plene co[illegible] de delicto furti, licet neſciretur quan[illegible] pecuniæ [illegible] peſſime fuiſſet ordinatum ipſum reum torquendu[illegible] me confirmata ordinatio per Coll[illegible] Rotæ Bono[illegible] quia, ſi in caſu, probata ſubſtantia fur[illegible] circa quan[illegible] niæ, ſtandum erat iuramento in litem. ¶ Secundum qu[illegible] ſidero in hoc caſu, id eſt, ſi velis dicere [illegible] eſſe iuram[illegible] litem [illegible] plene conſtet de crimine furti cont[illegible] Ghiglonum Becchi ad verificationem quantitatis pecuniæ furto [illegible] iuxta diſpoſitionem *d. l. ſi quando. Cod. vnde vi. & d. c. fin. quod met. cau.* [illegible] procedunt [illegible] ſimpliciter ſine viole[illegible] [illegible] iuramento in litem [illegible] eſſe [illegible] poteſt, quia etiam ſi probatum eſſet [illegible] furti p[illegible] per teſtes, ſine qua prob[illegible] iuramento [illegible] litem lo[illegible] non poteſt *l. ſi quan[illegible] & d. c. ſi.* talis tamen probatio [illegible] & in ſubſta[illegible] per tort[illegible] quia tortura [illegible] indicia ſed etiam [illegible] tiones. † quia vi[illegible] probati[illegible] 4
præcede[illegible] debilitate per torturam rei & [illegible] perſe[illegible] tam, vt ex e[illegible] non poſſit. Al[illegible] de [illegible] [illegible] ſequitur [illegible]

[illegible]

ciſionib. Bur.de geſu conſilium. qu [illegible] *colum. 4.* [illegible] q[illegible] a Boert [illegible] ſur [illegible] on [illegible] præſe [illegible] p [illegible] teg [illegible] idn ob[illegible] tu [illegible] qu [illegible] tionibu [illegible] s, præce [illegible] B [illegible] ſi. [illegible] *ff. de quæſt. in addi. ad Bar.* quia Al[illegible] *l. qui ſententiam C. de pœnis. in addi. ad Bald.* [illegible] A [illegible] mouetur per tex. [illegible] omnino ſacit, [illegible] to [illegible] minori [illegible] Bo [illegible] in A[illegible] *in* [illegible] ad dicta p[illegible] cum *addi. qui* [illegible] ſtine [illegible] eptata reuocauerit & ſtatuerit. vid[illegible] quod mal [illegible] batur, & quod [illegible] tex. nihil [illegible] ¶ Ex præm[illegible] inferu[illegible] tur. Primum, quod ſi ve[illegible] enim probatio n eſſe[illegible] rerur q[illegible] trac[illegible] e, q[illegible] quærit pr[illegible] are pe[illegible] tem, ſequitur quod iudic[illegible] s qui p[illegible] in tre [illegible] mandando torquer[illegible] lena probationis deficit, & vbi iuramen[illegible] rat, [illegible] pa[illegible] s aduerſa non [illegible] debit allegare turpi[illegible] quod primum iudi[illegible] es viri non ob[illegible] curi, & d[illegible] C[illegible] Rotæ Bononienſis errauerunt [illegible] Secund[illegible] lanum, qui poſt [illegible] les probau[illegible] pœnæ, ſic fuerunt debilitat[illegible] e vt reus ex [illegible] condemnari non poſſit de furto aliquo magno vel paruo, ceſſante autem probatione furti, ceſſat & neceſſario iuramentum in l[illegible] m contra furem, [illegible]

5 ſine † probatione furti ſtare non poſſit iuramentum in litem vt [illegible] d[illegible] ctum eſt, *per d. l.* [illegible] *quando. C. vnde vi. & d. c.* [illegible] *quod met. cau.* Et ſi non poteſt r[illegible] us de furto condemnari & ſi debilitatur probat[illegible] non poteſt reus de furto condemnari & ſi debilitatur prob[illegible] o ſubſtantiæ furti, impoſſibile eſt ſtare poſſ[illegible] qualitatem ſine ſub[illegible] cto, id eſt, quod præſtetur iuramentum in litem fundatum ſuper furti ſubſtantia: fundamento enim ſublato omnia corruunt. *l. hactenus. in fin. cum l. ſeq. ff. de aqua plu. arc.* [illegible] *nam origo. ff. quod vi aut clam l. egi ff. de exceptio. rei iudicatæ. c. cum Paul. 1. q. 1. cum ſimilib.*

Aut volumus dicere probationes furti obiecti, ad plenum factas non eſſe, ſed ſolum per indicia & præſumptiones, quod ipſum concedunt & præſupponunt, [illegible] tam Rota Bononienſis, quam omnes Doctor. qui ſcripſerunt pro parte aduerſa, & iudices qui pronunciauerunt quæſtioni locum eſſe. Et iſto caſu res eſt [illegible] ndiquaque clariſſima nemine diſc[illegible] epante, quod per torturam rei [illegible] ſuſtinentis negatiuam, purgantur omnia indi[illegible] præcedentia, v[illegible] cunq; vehementia & efficacia, & hoc concedit etiam Alex *in d. l. vnius. § 1. ff. de quæſt. in addit. ad Bar.* Itaque ſi purgantur indicia ve[illegible] mentia, [illegible] o etiam probationes præcedentes per tortur[illegible] rei, quomodo fieri poteſt vt deferatur iuramentũ in li[illegible] t[illegible] aliquem, vt furem, cum tale iuramentu[illegible] non deferat[illegible] niſi furto probato ad plenum ¶ Ex præmiſſis apparet non eſſe locum iuramento in litem, arguendo a ſuf[illegible] enti partium enumeratione, ſiue dicamus probatum eſſe fu[illegible] m plene, ſiue per indicia tantum, quia tortura ſubſecuta omnia purgat ta[illegible] n probationes quam indicia, dico tamen probatio[illegible] es aliquas f[illegible] as no[illegible] ſſi[illegible] per aſſerta teſtimonia partis aduerſæ. Ad quæ ſingulatim reſponſum fuit per Doct. Purpura. in *ſua cop[illegible] allegation[illegible]* idem hoc conſeſſi & iudices & Doctor. qui con[illegible] luerunt pro parte aduerſa torturæ locum eſſe, maxime Rota Bononienſis, qui omnes ſi vidiſſent plene probatum eſſe crimen furti, ſuper tortur[illegible] non veriſimiliter cõtuliſſent, ſtante remedio ordinario iuramenti in litem, introducta cõtra violentos fures & doloſos, & ſi pars captioſius inſtaret allegando turpitudinem iudicum patronorum cauſæ. quod pronunciauerint ſuper tortura in crimine claro & probato teſtibus, dico quod tenerentur iudices in ſyndicatu pro iniuria & intereſſe, rei, vt per Marti. *in d. practi. cau. crimi. § nunc videndum. & §. quoniam. in l. 1. n.* [illegible] *ff. de quæſtio. & in d. l. edictum. eod. tit.* Similiter pro tortura iniuſta teneretur pars denuncians actione iniuriarũ, in qua venit omne dãnũ & intereſſe tot. *l. item apud. §. ſi quis libello & in l. iniuriarum actio. § ſi quis per iniuriam. ff. de iniu.* Alex. *in con[illegible] vol. 1. in 2. du[illegible] lib. 1.* videamu[illegible] modo iniuriam & damnum perſonale, inde[illegible] bi[illegible] torti, æquipollet aſſe[illegible] to damno p[illegible] ar[illegible] o parus, cũ pœna quælibet corporali etiam minima damnum pecuniariũ excedat. *l. in ſeruorum. in fi. ff. de pœnis.* vbi dicit tex. quod ſolus ictus fuſtium [illegible] maior eſt damnatione pecuniaria. quanto magis idem dice[illegible] ueſt in tortura, quæ dicitur g[illegible] anior abſciſſione vtriuſq;

[illegible] *in auth. vt nulli iu[illegible] c. Dec. in l. imperi[illegible] ſi dem re[illegible] om[illegible]* De qua i[illegible] proteſtar[illegible] & [illegible] cauſ[illegible] ommiſſa memor[illegible] domin[illegible] D[illegible] o [illegible] p[illegible] o [illegible] cta eſt damnatio[illegible] & [illegible] ¶ Se[illegible] und[illegible] principaliter conſidero, quod [illegible] tort[illegible] quantitate p[illegible] quæ[illegible] ſſetuerit [illegible] non ent[illegible] potuit, [illegible] p[illegible] abuſiſſe. [illegible] & pa[illegible] o[illegible] ne[illegible] ed[illegible] otem quantitate a[illegible] uiſſe, [illegible] ipſe autem toin[illegible] erta [illegible] per q[illegible] am turo[illegible] n torum, a[illegible] nitam pu[illegible] omnia indicia & omnes probationes præce[illegible] de[illegible] q[illegible] pe[illegible] ſumma p[illegible] ment. Itaq; pe[illegible] præ[illegible] nocentiæ, [illegible] ſit, quomodo [illegible] po[illegible] lo[illegible] cu iuramen[illegible] probari [illegible] m [illegible] ta[illegible] ad e[illegible] p[illegible] eſſe, cum p[illegible] bau[illegible] us d[illegible] p[illegible] niſſe. A[illegible] qu[illegible] ipſum fund[illegible] duc[illegible] dum puta ¶ Se[illegible] aliquis, p[illegible] & probitates p[illegible] quis ortus eſt, [illegible] quita iſto caſu permittitur tortura rep[illegible] genti & [illegible] mena[illegible] *in l. 1. col.* [illegible] *med. C. quorum appel. non recip.* ſequitur M[illegible] Si permittitur rep[illegible] tio torturæ minus [illegible] apparet quod ex prima tortura non pu[illegible] purg[illegible] rentur non per [illegible] retur repe[illegible] abſol[illegible] reus debe[illegible] nqui probatum. Bar. *in* [illegible] Rom. *in conſ. 451. in fi.* quod tamẽ eſt contr. Bal. *in* [illegible] *27. lib. 5.* [illegible] probatur ex qualitate [illegible] Sed [illegible] reum minus ſuffi[illegible] enter fuiſſe tortũ, ob id pet[illegible] petitio, ergo. &c. ¶ Ad iſtud argumentũ [illegible] ſpondeo [illegible] modũ tortus fuit reus. In qua re conſi[illegible] ro, [illegible] ad 6 haberi debet cum moderamine. *l. de minore. § tormenta. ff.* [illegible] ne alias ferior iudicis cõtu[illegible] ratur in fauorẽ. B[illegible] *in d. conſ.* [illegible] *col.* [illegible] *ſi hi[illegible] 5. quod refertur inter con[illegible] Rom. conſ. 451.* [illegible] amen torturæ relinquitur arbitrio iudicis *l. quæſtionis modum* [illegible] In quo arbitrio iudex conſiderare debet comple[illegible] litatem rei accuſati, an ſit d[illegible] bilis [illegible] vel plebeius, ciuis vel ruſticus, iudex conſider[illegible] debe[illegible] litatem criminis, an ſit leue, aut graue, vel atrox [illegible] *de quæſt. verſ. qualiter debeat.* ſequitur Angel. *de mal. ſi in verſ. quod fama publica præcedente q*[illegible] *& ibi in addi.* Marti. *in pract.* [illegible] *§.* [illegible] *pedita.* [illegible] *5.* [illegible] bi etiam Marti. quod in tali [illegible] arbitrio iudex debet [illegible] b[illegible] nignitate, potius quam atrocitate. Sed quis ad[illegible] duritus, ſerus, ſeu etiam [illegible] barbatus [illegible] violen[illegible] manus, inclemens, ſanguinarius, plagoſus [illegible] crudeliſſime cum eo actum in modo quæſtionis [illegible] habita ratione complexionis corporis non ita fortis, q[illegible] perſonæ, quia mercator, ciuiliter nõ ruſtice educatus, [illegible] conſiderando qualitatem criminis furti, quæ non dicitur de atroc[illegible] criminis enim grauitas cognoſcitur ex grauitate pœnæ, quia pœna & delictum ſibi inuicem correſpondent, & pœna de[illegible] men[illegible] ſurari debet *l. ſite.* vbi Bart. [illegible] *de infam.* [illegible] maius, quod grauius repentur vindic[illegible] cum *c. non afferamus* [illegible] *t. quia tua d. gl. 2. in fi. de ſtatu monacho* no[illegible] B[illegible] ld. & Al[illegible] x. *in l. 1.* [illegible] *quis cum, qui.* Cur[illegible] *in conſ. 5* [illegible] *colum. 19. in fin.* D[illegible] *c*[illegible] *colum 1. poſt med. C. de ſacroſ. eccl. & ibi* [illegible] ¶ Sed pro [illegible] to, [illegible] re communi, non imponitur pœna [illegible] *authen. ſed nouo iure.* [illegible] *de ſeruis fugit.* ergo apparet, quod [illegible] atrocionbus, licet graue & magnum [illegible] ¶ Sed pone [illegible] geretur de crimine aliquo atrociſſimo, [illegible] commiſſo & de tempore nocturno, [illegible] diceretur ſufficiẽter tortus, quia [illegible] dæ aut torturæ eleuatus vſq; ad taglio[illegible] magno [illegible] re & dolore ac ſudore in facie. Deinde ſecundo loc[illegible] tus prope [illegible] ghiolam, cum pondere vnius bomba[illegible] ex, librarum triginta, ad pedes, licet paulatim de[illegible] ſue[illegible] quæſtione. ¶ Poſtea ſuſtinuit te[illegible] violent[illegible] natus vſq; ad [illegible] lam cum q[illegible] ſiſ[illegible] eſt reum ſufficie[illegible] ter to[illegible] iuſſit [illegible] ad [illegible] vbi rem [illegible] & membra enodat[illegible] ad ſua loca reſtitueren[illegible] fuit ſu[illegible] ciens membris enodatis & diſſolu[illegible] ¶ Iam diceretur reum no ſufficienter tortum, ex integ[illegible]

[illegible]

[illegible]

p[illegible] ſ[illegible] de eſt venire [illegible] quia [illegible] p[illegible] probation[illegible] [illegible]. ¶ [illegible] qu[illegible] principa[illegible] [illegible] d[illegible] fideicommiſſum quæ[illegible] a [illegible] B[illegible] *in l. ſemper. § fin. ff. quod vi aut clam [illegible] l. [illegible] ſi quando. Cod. vnde vi*. De[illegible] in Rub. ex-tra [illegible] colum[illegible] 15. *poſt med. verſicul. prædicta concluſio*. ¶ Po-ſt[illegible] co, n[illegible] modo poſſe tractari de iuramento in[illegible], [illegible] ex diſpoſitione legis, ob id [illegible] [illegible] ſecundum Paul. de Caſt. Rom. Alex. & M[illegible] *§ [illegible] patrum, per Ro[illegible] in conſi.* [illegible] *col. in fin. lib. 3.* Decius *in l. edita colu-mna* [illegible] id tamen procedit quando eſſe[illegible] tali he[illegible] [illegible] informatus de v[illegible] alia [illegible] tum [illegible] veniendo viam [illegible] Ba[illegible]. *ſper. [illegible] tit. [illegible] domin. & vaſal.* [illegible] *l. penul.* § *fin.* [illegible] *ff. ne* [illegible] *qui* [illegible] *in* [illegible] *col.* [illegible] *16* [illegible] *de* [illegible] *&* [illegible] *col.* [illegible] *penul. poſt med.* [illegible] Bar. *in l. edimon.* [illegible] *in fin. de nouo-ur.* [illegible] rationem a[illegible] in pa[illegible] iuramen-tum, habetur [illegible] propria [illegible] admi[illegible] urinn ſuper his, quæ [illegible] & ſequi-tur Gemin. *in conſilio 167 in fin.* tradit A[illegible] and. *in* [illegible] *columna ſinal. lib. 3.* [illegible] Bozii e[illegible], de quo agitur, qui de[illegible] mot[illegible] quicquid [illegible], *l. 1. C. de falſa mo.* [illegible] *col. de con-ſuetu* [illegible] 4. A[illegible] factum defun-ctus [illegible] vel qu[illegible] *l. ſi quando.* [illegible] ſed impuberibus non commun[illegible] [illegible], ergo & [illegible]. ¶ Secundo non p[illegible] eſt Michael Bozii ſ[illegible] re facti [illegible] de quo agitur, quia vt pars fatetur in prima eius ſuppli[illegible], mortuo Antonio Bozio eius patre, pecuniæ per-uenerunt [illegible] d manu [illegible] Thomæ Coſtæ & ſic non poteſt di-ci [illegible] Michael Bozii poſſit ſcire, [illegible] quantas pecu-nia reliquerit [illegible] Coſta, quia cum eo non ſtetit nec habita-uit, nec [illegible] præſens, quando mortuo Coſta, pecuniæ fuerunt remiſſ[illegible] [illegible] vxorem. ¶ Tertio non videtur di-ſputandum de [illegible] vel ignorantia [illegible] eius ſupplica-tione oblata ab initio cauſæ, ſub d[illegible] contesta eſt qu[illegible] ignorat quantas pecuniæ d[illegible], quomodo [illegible] [illegible] iurare ſuper quantitate quam ignorat. ¶ Ex qui-bus [illegible] tedium in[illegible] pro qui-b[illegible] [illegible] ndum, *exgid.* [illegible] *ff. de* [illegible] de [illegible] reſpondeo, ſaluo ſaniori iu-dic[illegible]o. Sauiliani 26. A[illegible] 1546.

S V M M A R I A.

1 [illegible] *ſuccedant* [illegible] *quitationem, & quo caſu.*
2 [illegible]
3 [illegible] *quitur* [illegible] *interueniente nuncio, vel epiſtola.*
4 [illegible] *debet.*
5 *Qua* [illegible] *contractus, & vltimas voluntates.*

CONSILIVM CCLXXXVIII.

Pro Iacobina vxore Ioannis Mariæ Rauati, contra here-des Ludouici Innocentii alias Leuini, de Sauiliano.

D[illegible] [illegible] ex corde poſtulato. Margarita Leuinæ [illegible] patri Ludouico omnia eius bona paterna & [illegible] tamen lege, quod ſi contingat filios maſculos ipſi-us Ludouici, tam natos, quam naſcituros, ſeu ipſorum filiorum fil[illegible] [illegible] abſque liberis maſculis legitimis & naturalibus quod eo caſu ipſa Margarita ſuccedere debeat in bonis ipſius Ludouici, ac parte dimidia dotium, quondam Ioanninæ ma-[illegible] ſi ipſa quitatio facta non eſſet. Deinde deceſſit dictus L[illegible] Leuini rel[illegible] Philippo & Antonio eius filiis, ac Ia-[illegible] & dicta Margarita filiabus ab inteſtato. Quæritur ad quos pertineat portio dictæ Margaritæ quæ quitauit, [illegible] in d[illegible] Margaritæ ſic quitata, ſuccedere debeat dicta Iac[illegible] ſimul cum dictis Philippo & Antonio fratribus? V[illegible] d[illegible] prima fronte quod ita quitata per ipſam Margaritam in ſolid[illegible] pertineant ad ipſos Philippum & An-

[illegible] maſculos [illegible] Iacobina [illegible] [illegible] maſculorum, quia [illegible] [illegible] quod quitantia nulla [illegible], ſed quia [illegible] b[illegible] contemplatione [illegible] eius, appl[illegible] [illegible] vnitis *l. legatum. § [illegible] quibus et* [illegible] *ff. de colla. bon. Cod. de leg.* Bartol. *in l.* [illegible] *forma legato. § ſi teſtator col. 2. ver. præſta-* [illegible] Addo [illegible] *C. de collat. & l. ſi defunctus.* [illegible] *ſui* [illegible] *leg.* [illegible] Bald. & Pau. de Caſt. quæ duo iura ad hoc ci[illegible] *in conſ. 108* [illegible] *ante med.* ¶ Nec obſtare vide[illegible], quod Margarita quitauerit [illegible] & non fratribus, & [illegible] quer[illegible], quod [illegible] bona [illegible] pertinerent ad pat[illegible] quod in e[illegible] videtur [illegible] æqualiter [illegible] bus, licet & [illegible], ideo, [illegible] inſpicienda perſona patris, cui [illegible] quo [illegible] contempl[illegible] [illegible] *l. ſi quis* [illegible] [illegible] *ff. de lib.* [illegible] *quid* [illegible] § [illegible] *ff. de leg.* [illegible] *ſid. commiſſ.* [illegible] *leg.* [illegible] *& d. l.* [illegible] *legato. § ſi teſtator.* vbi [illegible] videtur abſurdum quod dicta Iacobina [illegible] nibus quitatis contra intentionem Margaritæ [illegible] noluit [illegible] minas [illegible] conditioni [illegible] Ma[illegible] deſicientibus maſculis, noluerit quitationem eſſe[illegible] ne[illegible]. ¶ Sed præmiſſis non obſtantibus, contrarium [illegible] tuere verius, quod tam in bonis & iuribus quitatis [illegible] ſuccedat Iacobina cum fratribus. Et primo iſta res vide[illegible] ra reſpectu bonorum & hereditatis patris, iuenis de [illegible] quitationis, in quibus bonis filii maſculi poſſunt dic[illegible] quæſitum iu[illegible] ex illa quitatione: nam talis quitatio reſp[illegible] bo-norum patris viuentis non poteſt dici quitatio aut [illegible] atio proprie, ex quo filia nihil poterat cedere aut remitt[illegible] nihil iuris habebat in hereditate patris viuentis, etiam [illegible] legitimæ *l. 1. § ſi impuberi ff. de collatio. bon.* igitur non potuit [illegible] aut remittere quod non habebat *l. traditio ff. de acq. rer. dom.* [illegible] *plin. ff. de reg. iur. cum ſimil.* fuit igitur tale pactū de [illegible] & ſic repudiatio. Sed ius repudiatum accreſcit [illegible] dib. etiam quod fiat repudiatio in fauorem vnius [illegible] aut eius contemplatione, quia in iure accreſcen[illegible] creſcit portioni nō habita ratione perſonarum *ſi* [illegible] *her. l. ſi Titio in ſin. ff. de vſufr. l. interdum. ff. de vſufr. accreſ.* [illegible] *§. fin. ff. de cond. & demonſtr.* Et ita in terminis [illegible] minat Bal. *in l. ſi actionem.* vbi Dec. *in 3. no.* poſt Pau. d[illegible] *C. de pactis.* idem tradit Paul. de Caſt. *in conſilio* [illegible] *lumna 2. verſicu. & ſi dicatur. & in conſil. 252. Vi[illegible] ſupra* [illegible] *l. 1. & col. 3. circa med.* [illegible] ¶ Quod tamen non procederet qu[illegible] pudiaretur hereditas mortui, quia tunc, ſi fiat repudiatio con-templatione viuius, alteri nihil accreſcit: quia ſic repudi[illegible] ci-te videtur prius adire & deinde renunciare. Pau. de Caſt. *in* [illegible] *dium. C. de collat.* ſequitur Alex *in d. conſi. 149. col. 2. poſt med. lib. 7.* addo eundem Pau. *in d. conſi. 252. col. 3. circa med.* vbi etiam Paul. quod ta-lis additio tacita, ſolum operatur validitatem donationis, vt et acquiratur, cui fit renunciatio aut repudiatio, non vt renuncians obligetur oneribus hereditatis. ¶ Maior difficultas eſt circa bona materna, in quibus tamen adhuc idem videtur conclu-dendū, quia talis quitatio facta fuit Ludouico patri acceptanti pro ſe & heredibus, & ſic pro omnibus heredibus, quia indefi-nita æquipollet vniuerſali *l. ſi pluribus* vbi Bar. *ff. de le* 2. adeo cū ver-ba acceptationis videantur clara, non videtur dubitandum *l. ille aut ille § cū in verbis. ff. de leg. 3. cum ſimi.* ¶ Secundo aut filii maſcu-li ſoli volunt venire ad portionem Margaritæ bonorum mater-norū tanquam heredes patris ab inteſtato aut virtute dictæ do-nationis [illegible] tanquam heredes patris & tanquā illa bona materna eſſent affecta patris per illam renunciationē & ſoli venire non poſſunt, quia adeſt coheres pro tertia parte dicta Iacobina. Si volunt [illegible] nire virtute dictæ renunciationis non poſſunt, quia pro eis tanquam filiis maſculis nullus fuit ſtipulatus nec acce-ptatus. † Conſt[illegible] tamen quod abſenti ius non quæritur non in- 3
teruueniente nuncio vel epiſtola. *leg. conſenſu. ff. de action. & oblig. & l. certum § ſi quis abſ. ff. de confeſ.* Anc[illegible] *in conſ. 127. col. 1. verſ. item pro-babiliter dici poſſ.* [illegible] etiam diſpoſitio liberatoria abſenti nō pr[illegible] deſt [illegible] aliq[illegible] [illegible] nomine abſentis *leg. idem in duob.* [illegible] *ff.* *vbi mod.* [illegible] *de pa. in.* Alex. *in l.* [illegible] *colum. 2. lib. 4.* & ita in ter-minis noſtris arguit Alexand. in *dict. conſ. 143. column. 2.* [illegible] *med. verſi. quod autem ancta filia lib. ſeptimo.* Et in hoc conſid[illegible] qu[illegible] nos

[illegible] omnes et [illegible] *pactum* [illegible] Itaq. cum [illegible] est dicendum [illegible] soli filii masculi [illegible] oporteret [illegible] heredes, pro soli filii masculi [illegible] neos similiter oportet restringi [illegible] verbum [illegible] masculo [illegible] rente de sol [illegible] proprietati [illegible] *quo nomine. ff. de ex.* [illegible] Itaque [illegible] certa & clara, non re[illegible] proprietate [illegible] licet actu non val[illegible] [illegible] *de vul. & demon.* tradit [illegible] *non fuerit solu.* [illegible] *ff. sol. ma. de con.* [illegible] verbum [illegible] lo [illegible] quia omnis restrictio [illegible] contra [illegible] sentiens. Bal. *in consil.* [illegible] *vol. 2. col. 2. circa med. lib.* [illegible] debet [illegible] non inter [illegible] ratione testium [illegible] *ff. de pact.* [illegible] *testamento. ff. de* [illegible] *C. de transact.* quæ [illegible] ad hoc citat Bal. [illegible] 48. [illegible] *lib. 4.* [illegible] videtur apparere de mente [illegible] quod voluerint [illegible] de solis filiis [illegible] posuerint in condi[illegible] respondeo, quod [illegible] quod intellexerint de omnibus heredibus [illegible] extraneis, qui vbi agerétur de ipsa [illegible] positionis & de vocatione expressa, facta est stipula[illegible] pacto pro heredibus, filii autem masculi solum fuerunt positi in conditione. est autem dubium, quod [illegible] quam dispositio. cum conditio nihil ponat in esse. [illegible] *conditione. ff. de condition.* [illegible] R[illegible], si diceremus pat[illegible] tem [illegible] de [illegible] masculis, induceretur [illegible] facultatis testandi respectu portionis paternæ quæ [illegible] Margaritam, de qua non potuisset disponere [illegible] sed non est verisimile quod pater [illegible] portionem Margaritæ [illegible] gereretur portionem [illegible] testandi. [illegible] solum tolli non [illegible] *cum duobus* [illegible] *de supremis iudiciis constringere* [illegible] *pactum quod* [illegible] Decius *in consi. lio 475.* [illegible] *med.* [illegible] contrahentium [illegible] filiis M[illegible] & [illegible] quirere, verisimil[illegible] quod [illegible] enim fuisset [illegible] & filiis [illegible] pro se & h[illegible] bus. [illegible] *C. de cad. toll. l.* [illegible] [illegible]

[illegible] cet Margarita [illegible] stipulatione [illegible] præcise [illegible] noluit [illegible] masculi [illegible] turo posuit nec [illegible] censeantur [illegible] dispon[illegible] debet [illegible] claro, in quo pater [illegible] heredibus, quo nomine appellatione [illegible] masculi & fœminæ [illegible] pro [illegible] omnia argumenta [illegible] respondeo quod [illegible] tamen [illegible] masculi [illegible] [illegible]

in d.l.2.colum fin.ff.de relig. & d.l.cum antiqua col. ... a dictum eſt in ... vbi exiſtentia ma... ceſſare ... teſta... tariam & vocationem ſubſtitut... & reducit rem ad cauſam inteſtati, & tamen lic... illa mater illud ... & eius contemplatione iſtud ... quod in cauſa inteſtati repentur ... pupillo in par... cauſ... ... in ipſi ſtate pupil ... ſimul cum mat... ... et cum illa deficiente ...deicommiſſo, inducitur propter maſculos & eorum contemplatione & tamen appli... ... etiam fœminis, quod dictum videtur po... ... licem. Valdi dici poteſt quod intentio Margaritæ quitantis ... vt ſibi prouideret nullis extantibus maſculis ... extantib. quod teneantur bona quitata in liberta... ... patris. Paſſus tamen ſubtilis eſt in quo ingenia ... ... line poſſint contendere intentione ... ... Margarita quitantis: ideo iudicio melius aut rectius ſententi... ... ſubucio, faciliotem certe aditum aliis paratum putem ad quæſtionis examinationem. Sauliani. 8. Auguſti. 1546. Aymo Crauetta ex Sauiliano. I. V. D. ſub correctione.

SVMMARIA.

1 *Filia non dicitur heres extraneus.*
2 *Quando argumentum à contrario ſenſu nihil operetur.*
3 *Actio reſeruatio iuris ſuccedendi, quid poſſit operari.*
4 *Non fit repetitio in vocationibus diuerſis & ſeparatis.*

CONSILIVM CCLXXXIX.

Pro eadem Iacobina Leutini conſilium ſubtiliſſimum.

DIVINO ſubſidio ex corde poſtulato. Reuo... ... in dubium ſcripta mea in fauorem Iacobinæ. filiæ quondam Ludouici Leutini dum concluſimus ipſam Iacobinam admitti ad bona ... quitata per Margaritam ſororem ſimul cum fratribus maſculis, & contra ſcripta mea adducitur fundamentum, quod quo Margarita quitauit contemplatione fratrũ, quibus ... voluit poſſe ſuccedere, illa bona debent applicari ... fratribus, & ſtipulatio patris acceptantis quitationem pro ſe & heredibus, debet reſtringi ad heredes maſculos. ¶ Ex quo iſta ... ione contra ſcripta mea adducitur primũ dictum Salic. *in l. pactum quod dotali. C. de pactis.* vbi quod filia quæ dote contenta renunciauit bonis paternis, non prohibetur ſuccedere patri ab inteſtato niſi extarent fratres, vel alii liberi quorum contemplatione facta eſſet, quia verba generalia quitationis debent reſtringi, ne videantur extraneos ſuæ poſteritati ... ... ſequitur Alexand *in conſ. 29. lib. 3.* Sed ſi verba quitationis ... patri acceptanti pro ſe & heredibus intelligerentur generaliter, namque pro heredibus extraneis, extranei heredes excluderent filiam renunciantem à ſucceſſione patris, & ſic ... ... ¶ Sed iſtud argumentum ex dicto Sali. ... ... patrem, nam Sali. vult quod quitatio filiæ ... noceat patre decedente ab inteſtato, etiam electa filia quæ non quitauit, quia filia non dicitur heres extraneus, & ſic ... æquiuocare pars dum dicit quod verbum heredibus debet reſtringi ad maſculos ſecundum Salic. & Alex. cum ſequentem, quod hoc non dicunt, imo volunt filiam quitantem excludi per alteram filiam quæ non quitauit, licet mihi non placeat dictum Sal. quod filia quitans excludatur per alteram filiam ... quitantem vt dixi *in conſ. 42.* ¶ Secundo retorqueo dictum Sal. & Alex. contra partem, nam illud procedit ab inteſtato quod ... ... non excluditur per heredes extraneos ob præſumptam voluntatem parentis cui quitatio facta eſt ... voluiſſe ... nam poſteritate ſuæ ... po... ... dictum Sal. & Alex. in caſu dubio, ſecus voluntas ... quam ſo pater teſtaretur & inſtitueret heredes ... tunc filia quæ quitauit non excludere ex... ... ex quo ... quitauit filia potuit pater de bonis quitatis diſponere ad arbitrium, quia ... clare apparet ... quod voluit ... alienam poſteritatem ſuæ præferre ... & ſic ex dictis Sal. & Alex. ... infertur aliquo modo, quod vbi pater ... quitationem pro ſe & heredib. quod verbum heredib. ... ... ad maſculos imo nec ad deſcendentes ... illud intelligi ... bet etiam pro extraneis. Et ... quod dictum Sal. redderetur talium intelligendum ... verbis generali... etiam pro extraneis, quia ... intelligitur facto teſtamento aut aliter facta diſpoſitione bonorum inter viu... quam diſpoſitionem teſtamentariam aut inter viuos nõ negant Sal. & ſequaces, imo eam expreſ... ... ... quamſi videantur Doctor. loquentes de hac materia quod renun... ... filiæ non nocet non exiſtentibus perſonis quarum contemplatione facta eſt, loquũtur ab inteſtato & nulla facta diſpoſitione per patrem, ſecus vbi pater expreſſe diſpoſuit. ¶ Ex præmiſſis infertur clara reſolutio quæ ... noſtræ, quod ... pater cui renunciatio facta eſt, poteſt ad arbitrium diſponere ... ... maſculis quorum contemplatione ... ... nullum ius quæritur quod ... ... quæritur ex tali renunciatione, ergo non poſſ... ... quitata ex aliqua ſtipulatione aut renunciatione, ſed ... ... quam heredes patris ab inteſtato, in qua inteſtati ſucceſſione ... ... debet ſuccedere ſimul ... eis, vt late diximus in prio... ... ſcriptis. ¶ Non obſtat quod ex aduerſo allegatur quod ... Margarita expreſſe quitauit contemplatione fratrum maſculorum ... ... manibus patris, quod ipſis fratribus videtur quæſitum ius, & ſic quod bona quitata ad ... pertineant virtute ipſius renunciati... ... & nunquam ad heredes patris, quia reſpondeo, quod Doct. in hac m... ... ... ſiue quitet filia contemplatione fratrum expreſſe ſiue tacite, & tamen ſolum volunt quod non noceat renunciatio non extantibus maſculis ab inteſtato, ſecus fa... ... ... mento in quo vocẽtur extranei, vel aliter facta diſpoſitione de bonis quitatis inter viuos: nam Bald. *in leg. pactum quod dotali. ... quæſ. C. de colla.* loquitur quando filia expreſſe quitauit contemplatione fratrum, & tamen in præcedentib. clare præſupponit quod illa quitatio præiudicat ab inteſtato tantum, ... non ex teſtamento quando inſtituerentur aut vocarentur. ... ... præſupponit quando pater teſtatus decederet aut ali... ... diſponeret de bonis quitatis. ¶ Sed adhuc inſtatur ex aduerſo quod ex quo quitatio facta eſt patri contemplatione maſculorum, ipſis maſculis cenſetur quæſitum ius, quia non inſpicitur tenor verborum ad quem verba dirigantur, ſed cuius contemplatione actus fiat vt illi acquiratur. *l. ſi ſeruo legato. §. ſi teſtator ff. de le... ... ſim. vt dixi in prioribus ſcriptis* ¶ Ad iſtud reſpondeo quod proc... ... ret quando verba diſpoſitiua conferrentur in Ludouicum patrem contemplatione maſculorum, ſed iſta donatio ſeu quitatio collata fuit in patrem contemplatione ſui & heredum ſuorum generaliter, de maſculis autem mentio eſt facta in reſeruatione, quia reſeruauit Margarita ius ſuccedendi deficientibus maſculis, ex quib. verbis bene ſequitur à contrario ſenſu quod maſculis extantibus non reſeruat ſibi ius ſuccedendi, ſed non ſequitur, ergo maſculos vocat, quia hoc modo argumentum à contrario ſenſu extenderetur vltra limites ſenſus directi, cum tamen reſtringi debeat ad ipſos limites ſenſus directi: puta, ſtatutũ dicit ... minor 17. annis non poſſit ſe obligare niſi certa forma ſeruata, à contrario ſenſu ſequitur quod poſt illam ætatem 17. anno. non teneatur ſeruare illam formam, ſed non ſequitur quod cenſeatur habilitatus, vt poſſit contrahere ſine aliqua ſolennitate iuris, quia hoc modo extenderentur limites ſenſus directi in quo ſenſu directo nihil dicitur de ſolennitatibus iuris communis, ita Bal. *in l. ... C. de inutil. ſtipul.* ... ulchre Pau. de Caſt. *in conſ. 106. Incipiendo a ſecundo. lib. 2.* ſequitur ... *in l. 1. in prin. col. 15. ff. de off. eius in conſ. 11... col. 2. in conſ. 216. col. fin. & in conſ. 283. col. 4.* Itaq. cum ſenſus directus reſeruationis iuris ſuccedendi nihil loquatur de vocatione aut non vocatione maſculorum, ſed tantum de reſeruatione iuris ſuccedendi, non eſt dicendum quod argumentum à contrario ſenſu trahatur ad vocationem ipſorum: ... ſic bene fateor quod quitatio facta eſt contemplatione 2 maſculorum in hoc quod eis extantibus noluit poſſe ſuccedere Margarita, ſed non quod eis extantib. ipſis expreſſe & principaliter voluerit donare cum expreſſe donauerit patri pro ſe & heredibus. ¶ Comprobatur iſta reſponſio & declaratio, nam iſta Margarita ſolum ſibi reſeruauit ius ſuccedendi ab inteſtato, deficientibus maſculis: cum enim voluerit poſſe ſuccedere, iſtud non poteſt intelligi ex teſtamento, ita quod cogatur pater eam reſtituere, quia tale pactum de inſtituendo non valet tanquam auferens liberam facultatem teſtandi. Bar. & Doct. in *l. ſtipulatio hoc modo concepta. ff. de verb. oblig. in l. 3. column. 1. in fi. ff. de teſta. & in conſ. 112. Promitto.* ſi autem dicas quod reſeruatum fuerit ius ſuccedendi ex teſtamento voluntatis ſi forte inſtitueretur à patre, iſta reſeruatio fuit inutilis, quia nemini dubium quod pater non obſtante renunciatione poteſt filiam inſtituere, itaq; illa reſeruatio iuris ſuccedendi neceſſario intelligitur ab inteſtato. ergo ad cauſam inteſtati reſtringi debet. *l. cancellauerat. ff. de his quæ in teſta. delen.* Itaque ſi reſeruatio reſtringitur ad cauſam inteſtati

teſtari quomodo poſſumus dicere [illegible]

[illegible]

Margarita [illegible]

[illegible] poſt [illegible] ſed tantum [illegible] dat, [illegible] de bonis [illegible] modo. Pone quod pater [illegible] alienaſſet quæro, ſi Margarita [illegible] nationem virtute reſer [illegible] tempore dictum quod [illegible] maſculorum [illegible] teſt ad ius ſucce- [illegible] nata *l. in agris. ff. de acquir. rerum domi. cum ſim.* & ſi poſ- ſet pater diſponere de bonis [illegible] maſculis [illegible] quo caſu Margarita reſeruauit ſibi ius ſuccedendi [illegible] dicendum videtur quod permiſſet [illegible] pertinere extantibus maſculis quo a- ſu reſeruatio nulla facta eſt. ¶ Sed diceret aliquis, ſi bona [illegible] non pertinent [illegible] ſeculo [illegible] quittat [illegible] debent pertinere ab inteſtato excluſa Iacobina ſorore, quia ex quo Margarita reſeruauit ſi [illegible] dendi ab inteſtato deficien- tibus maſculis, videtur quod eis extantibus ad ipſos maſculos ſolos ius inteſtatæ ſucceſſioni pertineat. ¶ Ad iſtud argumentũ reſpondeo multis modis. ¶ Et primo, vt ſupra dictum eſt quod non debet ſumi argumentum a contrario ſenſu excedens limi- tes legis directæ, ſed [illegible] dictus ſolum reſeruat ius ſucce- dendi ab inteſtato deficientibus maſculis, ergo eis extantibus non [illegible] uat, ſed remanet quittatio in ſuo robore, ſed non ſe- quitur, [illegible] tantibus [illegible] bona ad eos pertinent, imo e- is extantibus ſtat quittatio in ſuo robore prout facta eſt, quia pertinent bona ad patrem & eius heredes iux a formam ſtipu- lationis & acceptationis. ¶ Secundo reſpondeo quod actus re- ſeruationis iuris ſuccedendi ab inteſtato deficientibus maſcu- lis non poteſt operari ius nouæ conceſſionis vt eis extantibus bona quittata cenſeantur conceſſa [illegible] lata ipſis maſculis, ſunt enim diuerſa & reſeruare & conc[illegible], quia reſeruatio nihil de nouo tribuit. Ang. *in l. omnes per iſtum text. C. de præſcrip.* [illegible] *l. pen. per illum tex. C. de tempor. ap. et* Bal. *in l. fin. C. de legi. tut.* [illegible] *in l. quo legatum in prin. ff. de leg.* [illegible] *in conſ.* 66 [illegible] *circa medi. 4.* Ideo actus reſeru[illegible] non debet [illegible] nouæ conceſſionis contr[illegible] teſtrin[illegible] ac[illegible]

[illegible]

quit [illegible] nab [illegible]

ani[illegible] undum [illegible]

nil quoties [illegible]

tur im ſequenti [illegible] cedentis, [illegible] late *l. pe.* [illegible] *& alibi ſæpe.* [illegible] ſecundum [illegible] ſuccedere ab inteſtato deficientibus maſculis, remanen[illegible] quittatione in [illegible] robore [illegible] redibus, ita quod [illegible] decedat pater inteſtatus ſed al[illegible] poſuerit de bonis [illegible], teneat di[illegible] ¶ Sexto [illegible] deo quod [illegible] interpretationem pa[illegible] heredibus, reſtringi [illegible] per verba illa libe[illegible] in reſeruatione, qui[illegible] redibus, recipiat dec[illegible] interpretatio [illegible] modo po[illegible] [illegible] maſculi [illegible] diuerſi [illegible] Bart. *l. ad capitis* [illegible] *& in conſilio* [illegible] poteſt quod dat [illegible] diuerſ[illegible] te diſponenti [illegible]

[illegible]

[illegible] ,quod hic [illegible] eſt. Pr[illegible] quis p[illegible] eſt [illegible] parte [illegible] appoſitum in a[illegible] part [illegible] ioci tione [illegible] us maſ[illegible] in conſi. [illegible] n. de A[illegible] in conſ [illegible] Alex[illegible] in conſ. 18. libr [illegible] in conſ. 21. in fi. lib. [illegible] in con. [illegible] column. pen. po. l. med. verſi. [illegible] ne de cruu [illegible] in con. 64. colum [illegible] in conſ. 339. colum 2. [illegible] 41. colum. pen. circa med. verſi. non [illegible] quod. Alexand. in con. 44 [illegible] m 2. in fin. in con. 214. ante fin. in conſilio 26[illegible]. & in conſ. 20. colum. [illegible] conclusio [illegible] C[illegible] in con. 2[illegible] col. 4. in fin. verſi. vbi [illegible] & in conſ. 237. colu. verſi. poſſet etiam forte [illegible] lib. 4. B[illegible] conſi. Alexand. in conſi. 5. colum. 4. in fin. [illegible] opere pretium eſt vt oſtendamus lib. 4. [illegible] in conſi. 142. colum. in fin. verſic. [illegible] & col. [illegible] verſi. 8. in fauorem lib. 1. & in con. [illegible] col. 4. lib. 3. C[illegible] in conſ. 47. col. 3. in fi. in conſi. 163. col. 4. & 5. & in conſ. 67[illegible] in fi. & col. ſupe. Ecce quanta D[illegible] copia hanc opin[illegible] teneat: mouentur Doct. quia vbi voluit teſta[illegible] expri[illegible] lis, [illegible] expreſſit: ergo vbi non expreſſit, non cen[illegible] voluiſſe, quia ita [illegible] exprimere in vna parte [illegible], ita [illegible] ego illam opin. non ſimpliciter ſequi[illegible] ſoleo di[illegible], ſed hic diſput[illegible] non exp[illegible] dit, quia di[illegible] io renunciationis diuerſo modo & aliter loqu[illegible] eptat[illegible] ne[illegible] nunc[illegible] tionis fit mentio de [illegible] maſculis, [illegible] qu[illegible] longa [illegible] differentia in materia traditionis ad heredes ex[illegible], et [illegible] non vid[illegible] ur dicendum quod verbum heredibus [illegible] de [illegible] maſculi verbum ipſum dupliciter impropriando [illegible] eſt. Et ſi intentio diſponentis fuit [illegible] benis maſculis, vet[illegible] facta eſt acceptatio pr[illegible] & fili[illegible] aut liberis, no pro [illegible] & heredibus. ¶Septimo, quod intentio diſponentium non [illegible] in illis [illegible] & h[illegible] ibus, intelligere de liberis [illegible], oſtendo [illegible] hoc modo renunciatio facta [illegible] fauorem maſculorum [illegible], ad[illegible] quod pater in [illegible] iudicium maſculorum nihil diſponere potuiſſet neq; inter viuos, neque in vltima vo[illegible]. Iſt in effectu eſt intentio & opinio pa[illegible] quod etiam intelligendo v[illegible]bum her[illegible] dibu[illegible] adhuc ſequi non poteſt effectus, quia [illegible], nam licet verbum heredibus capiatur pro deſc[illegible] ndentib. maſc[illegible], requiritur tamen quod [illegible] dentes ſint here[illegible] B[illegible] verſ[illegible] §. ſi. ff. ad Trebell. Alexand. in conſi. 10. colum 3. [illegible] medium verſic. item reſpondeo lib. 3. in conſi. 19. colum. 1. in fin. in conſi. 26 [illegible] n. 2. circa med. verſi. ſi ergo feudum prædictum. & in conſi. 18 colum. [illegible] verſi. conſu [illegible] poſſunt prædicta libro [illegible] Corn. in con. 109. colum. 4. lib. 1. & in conſ. 199. col. 14. in [illegible] verſ. & propterea non oblig. lib. 1. Dec. in conſ. 2[illegible] col. 4. in conſ. [illegible] 90. col. 3. in fin. verſ. Secundo [illegible] prima inueſtitura. & in conſ. 445 [illegible] circa medium verſ. ſecundum, [illegible] Idem [illegible] Coll[illegible] Doctorum Bononienſium inter conſilia Curtii ſenioris in conſ. [illegible] col [illegible]. Curtius ſenior in conſi. 74. colum. 4. circa medium. verſi. licet enim & in conſi penul colum 4. in fin. Iaſon in conſi. [illegible] o. colum. 5. lib. 2. hoc ita præſuppoſito quod requiratur filios eſſe heredes, d[illegible] quod intentio partis locum habere non poteſt quod filii maſculi omnino conſequi debeant iſta bo[illegible] a virtute quitationis aut donationis [illegible] ita quod alienare non poſſit in eorum præiud[illegible] neque int[illegible] uos neque in vltima [illegible] luntate, quia cum filii [illegible] bere non poſſ[illegible] bon[illegible] heredes patris illa poterant [illegible] nare, n[illegible] tales [illegible] uocare poterunt, [illegible] tanquam [illegible] obare al[illegible] on[illegible] ab eo factas. [illegible] ergo appareat quod in[illegible]

[illegible] intentionem. Quod [illegible] ſi quis [illegible] poſt m[illegible] ipſis [illegible] quitatio [illegible] loci volunt [illegible] ſed etiam alu[illegible] lud dictum fac[illegible] quia, quod [illegible] melius quod m[illegible] non ad[illegible] heredes patris [illegible] Iacobina [illegible] conſ[illegible] in fauorem maſcu[illegible] quitationis ad excluſionem Iacobinæ [illegible] Ideo perſiſto in priori [illegible] videam in contrarium & [illegible] ſuo ſemp[illegible] 12. Octobris 1546. A[illegible] Saurano [illegible] vtriuſque Doctor.

Svmmaria.

1 Sublato fundamento exemptionis neceſſario [illegible] corruat.
2 Quando teſtator ſuper aliquo [illegible] omnia [illegible] quæ ex [illegible] teras [illegible]
3 Facta renunciatione [illegible] dicimus ceſſare [illegible] cauſam ex[illegible]
4 Verba vniuerſalia ſunt maioris potentiæ quam generalia.
5 Renuncians omni legum & iuris auxilio cenſetur renunciare beneficio [illegible] mentarii.
6 Cum verba renunciationis ſunt clara ad omnia pertinentia non eſt vlterius dubitandum.
7 Contra præſumptionem quæ inſurgit ex antiquitate temporis, admittitur probatio in contrarium.

CONSILIVM CCXC.

Pro communitate Braidæ comitatus Aſtenſis contra particulares loci Sinfredi.

Diuino ſubſidio ex co[illegible] de poſtulato. Egregii Franciſcus C[illegible] Sebaſtianus M[illegible] Dominicus Racca. Ioannes Antonius de Prato & alii particulares ac [illegible] loci Sinfredi tranſegerunt cū vniuerſ[illegible] loci Braidæ [illegible] bonorū quæ poſſid[illegible] in territorio ipſius lo[illegible] Braidæ, & inter cætera ipſi particulares renunciauerunt eidam antiquiori tranſactioni ac omnibus in [illegible] contentis in [illegible] & per omnia quam voluerunt eſſe nullius roboris & momenti [illegible] quam ipſam antiquiorem [illegible] ipſi parti[illegible] gnauerant. In ipſa autem anti[illegible] inter al[illegible] cautum erat, quod liceret ip[illegible] particularibus ab[illegible] meſſes & fructus a finibus [illegible] Braidæ ab[illegible] lutione alicuius p[illegible] quod [illegible] fructus ab i[illegible] bus [illegible] Burg[illegible] loci Braid[illegible] & præ[illegible] non [illegible] particu[illegible] non [illegible] tranſactione[illegible] cendum prima fronte non [illegible]

[illegible]

[illegible] in ſiplurib [illegible] C. ut. and l. omnes. C. ſine cenſu [illegible] [illegible] ... [illegible] omnium bonorum in mobilibus [illegible] ... mprinc. de [illegible] ſſit. in [illegible] 26. col. 2. ante fin. & albi [illegible] pe. & [illegible] eo omnia [illegible] rehendi [illegible] niuerſalia, ut [illegible] iam exempti. [illegible] in ſi beneficiorum. [illegible] prab. lib. 6. quia [illegible] hec etiam Curtius [illegible] in conſi. [illegible] quod ſcribit Bal. in conſi. 16. Statuto [illegible] Trid. in. libro [illegible] in quod dubito ſuſpectus de [illegible] obſtantibus [illegible] us, comprehendit [illegible] & [illegible] genus exempla [illegible] & efficaci [illegible] potius quam ſub- [illegible] per verba vni- [illegible] compre [illegible] ndā- [illegible] ſpecia, quia natura [illegible] [illegible] hendun [illegible] poſſunt, ita quod nulla [illegible] in conſ. 326. Rex Rom [illegible] in fin. lib. 1. ¶ Non [illegible] quod hic præſuppono [illegible] in [illegible] etiam [illegible] verba vniuerſalia geminata, qui [illegible] & omnibus in ea con[illegible] & per [illegible]. Quæ verba vniuerſalia geminat [illegible] non poſſint vbi alias reſti[illegible] in conſ. 24. col. [illegible] lib. 1. Ideo verba vniuerſalia ge[illegible] biles. [illegible] l. 1. §. enunciatio. col. 5. ff. de oper. non nunc. [illegible] Alex. in conſ. [illegible] lib. 5. quod [illegible] verba vniuerſalia ge[illegible] ta comp[illegible] ch[illegible] ndit etiam [illegible] ta. Illa enim verba [illegible] comprehendunt [illegible] & maiora expreſſis. Soc. in con. 4[illegible] col. 6 [illegible] lib. 4. [illegible] 96. col. 2 [illegible] lib. 4. C[illegible] Sen. in conſ. 3 col. [illegible] ¶ [illegible] termino in terminis re[illegible] per verba vniuerſa [illegible] quod trahatur ad omnia etiā [illegible] præiudicialia, [illegible] Alber. de Roſa. in l. [illegible] conductor te[illegible] renunci[illegible] ſtenſitatis, ante alia, [illegible] præiudi[illegible] in conſ. 24. col. [illegible] Gozad. in conſ. 3. col. [illegible] in conſ. 9. col. [illegible] in conſ. 24. col. 5. [illegible] in med. verſ. accedat pro iſta concluſione. [illegible] Gozadin. [illegible] conſ. 3. [illegible] beneficio [illegible] reſti[illegible] l. de liu. [illegible] & omnia [illegible] beneficio tam iuris communis. Quam [illegible]

[illegible] & [illegible] expreſſe [illegible] & [illegible] guit & conc[illegible] in conſil. [illegible] quod quan[illegible] ditur ea [illegible] ind[illegible] erauerint bonis [illegible] Sit [illegible] dic[illegible] ve[illegible] neri[illegible], perinde eſt ac ſi ip[illegible] bant exemptioni in ea c[illegible] ca[illegible] o vb[illegible] eſt [illegible] venueri[illegible] perſua[illegible] radice. ¶ Decimo re[illegible] bema quod [illegible] tas, [illegible] contractibus, nec [illegible] in fin. de re[illegible] pen. in fin. C[illegible] ſed renunc[illegible] dicitur [illegible] ea, quia etiam [illegible] Braidæ enunciauit ip[illegible] vt dicitur. Itaque ſi [illegible] ex parte Braidæ renunciatio [illegible] ad omnia, idem dicendum eſt ex parte pa[illegible] cularium Si[illegible] æqualis om[illegible] contrah[illegible] to, ponitu[illegible] od particulares Siu[illegible] etiam renunci[illegible] ipſam [illegible] pugn[illegible] ergo [illegible] ſeruuat [illegible] Bart. ff. de bis [illegible] menta [illegible] forte facere po[illegible] viſi ſem, in quo renun[illegible] quæ proponun[illegible] his conſen[illegible]. Ex quibus [illegible] concluſi[illegible] non tam [illegible] ne & efficaciter fun[illegible] tam puro. Verum [illegible] difficultas conſiſtit in reſpondendo [illegible] contrari[illegible], ad quæ [illegible] quidem ex præmiſſis reſponſum apparet, ſed enim ad faciliorem explicationem [illegible] ondeo in ſpecie & ſingulariter. Itaq; non obſtat primum argumentum, quod vbi al[illegible] competunt d[illegible] ura, renunciatio facta [illegible] non proc[illegible] dit quando [illegible] ab alte[illegible] & [illegible] fundaretur [illegible] quia tunc ſubla[illegible] [illegible] ſupra di[illegible] [illegible] Bra[illegible] [illegible] ſupra dict. [illegible] ab ea [illegible] ea ſublata [illegible] ¶ S[illegible] quod argume[illegible] [illegible] de [illegible] ad

[illegible] ... nitobtan ... [illegible] ... exalio ... [illegible] ... enim ... con ... [illegible] ... quan ... [illegible] ... Bella- ... [illegible] ... ex instrumento appa[re]t ... quod ... [illegible] ... tempore longissimo, ... et quod so- ... per errorem & ex falsa causa, nec ... tunc cursus ... [illegible]

¶ Similiter videmus quod licet præsumatur pro sen- ... antiqua, quod omnia so[le]nnia & necessaria ... interuenisse, vt habetur *in auth. si quis in aliquo documento. C. de e-dend.* ... [illegible] ... contra eam de nullitate & iniustitia ... [illegible] ... Areti. *in consi.* ... *in consi.* 46. [illegible]

[illegible] ... verba ... [illegible] ... exemption ... [illegible] ... contenta omnia in ... transactione, & qui ... [illegible] ... & omnibus ab ... dentibus per ipsa prædicta. ¶ Non obstat quod renun- ... proximo, quoties alia co- ... in casu dubio, de præsu- ... [illegible] ... prædictum est. Nec obstat ... quod alia conue- ... potuit ... quo renun ... expresse fuit transactioni ... [illegible] ... in omnibus & per omnia. Non ob- ... homine. Si ... volu[i]sse renun- ... [illegible] ... ¶ Se- ... [illegible] ... aliquam ... [illegible] ... *ff. de pignor.* ... [illegible]

teſta. col. 3. poſt med. lib. 3. ſed verba renunciati[illegible] int[illegible], prægn[illegible]ntia & ampla, ideo [illegible] te in[illegible]ligi deben[illegible] etiam [illegible] na[illegible] [illegible] o [illegible] n proprieta[illegible] partiu[illegible] *l. cum leg.* [illegible] *ff. de teſt.* [illegible] *contra* [illegible] *lib.* [illegible]. Cald. *in conſ. 24 in tit. de prob.* A[illegible] *teſtam. C. de collat.* Dec. *in c. ap. non liceat. colum. 3 in fin. de prob.* ¶ [illegible] quibus [illegible]oncludo in fauorem Communitatis Br[illegible] a ſe[illegible] n[illegible] ea quæ proponuntur, qua in[illegible] ta non vidi. & ita reſpondeo, ſaluo ſaniori [illegible] Sauiliani 19. Auguſti [illegible]546. Aymo Crauetta ex Sauiliano I V D.

SVMMARIA.

1 *An dos augeri poſſit de bonis fideicommiſſi.*
2 *Plus eſt de nouo facere quam augere.*
3 *Vbi agitur de vtilitate publica fit extenſio, etiam in materia pœnali & prohibitiua.*
4 *Ius correctorium dicitur quando in [illegible] tum [illegible] tollitur.*
5 *A pari procedunt interpretatio voluntatis [illegible] & legis.*

CONSILIVM CCXCI.

In cauſa Ioan. Curtini de Carmagnolia.

DIVINO ſubſidio ex corde poſtulato. Ioannes Curtini de Carmagnolia de anno 1516. & die 26. menſis Martii inſtituit Matthæum Curtini eius filium heredem, cui ſubſtituit filias ipſius teſtatoris, mandando filias ipſius Matthæi dotari & ei dari pro dotibus quantum reliquerat filiabus ipſius teſtatoris. Mortuus eſt d. Matthæus relicta Lucia eius filia & Margarita vxore, quæ Margarita deceſſit relicta dicta Lucia. Dubitatur modo, quia Matthæus heres grauatus maritauit eius filiam Luciam cum ampliore dote atque relicta eſſet ab auo paterno, an illud plus augeri potuerit in præiudicium fideicommiſſi? Secundo dubitatur an dicta Lucia heres Margaritæ matris poſſit detrahere dotes maternas de memoratis bonis ſubiectis fideicommiſſo. ¶ Circa primum dubium breuiter & reſolutiue pro-
1 cedendo, † dico potuiſſe augeri dotes Luciæ de bonis fideicommiſſi. Etenim non eſt dubium quod ſi Ioannes teſtator nihil diſpoſuiſſet de dotatione filiæ heredis grauati, quod heres grauatus potuiſſet dotare filiam de bonis fideicommiſſi, ſi legitima & Trebellianica ſatis non erat. *authen. res quæ.* vbi Bar. & Doct. *in l. q. C. comm. de leg.* Ergo à fortiori dotem iam conſtitu-
2 tam augere potuit, quia † plus eſt de nouo facere quam augere, *reg. l. cui licet quod eſt plus. de reg. iur. lib.* [illegible]. Ideo licet inferior non poſſit ſtatuere contra legem ſuperioris, poteſt tamen diſpoſitionem ſuperioris augere, addendo pœnam eius prohibitioni. *glo. in clem. ne Romani. in verſ. colli. in 3. q. de elect.* Card. *in clem. fi. verſ. quod ſi. in princ. de pœnis. atque ſimil.* vt per [illegible] *in cap. quod ſuper his. de maior. & obed.* ¶ Secundo nos habemus, quod principalis & augmenti idem eſt iudicium, & diſpoſitum in vno locum habet & in altero *l. inter ſocerum §. cum inter ff. de pact. dot. l. fin. C. de donat. ante nuptias. l. etiam. C. de iur. dot. cum ſimil.* ergo diſpoſitio *d. auth. res quæ.* loquens in principali conſtitutione dotium locum habebit, & in eius augmento ſi dos principalis non ſufficiat. ¶ Tertio diſpoſitio *d. authen. res quæ.* dicitur fauorabilis introducta propter vtilitatem publicam, vt mulieres dotatæ congrue viuant, vt expreſſe lo-
3 quitur ille text. ſed † vbi agitur de vtilitate publica fit extenſio etiam in materia pœnali & prohibitiua. *l. cætera. §. hoc S.C.* vbi Iaſ. *in 5. not. ff. de leg. 1.* Bar. *in l. 2. §. exercitum ff. de his qui not. infam. & in l. quemadmodum. C. de agric. & cenſ. lib. 2.* Diſpoſitio enim concernens vtilitatem publicam dicitur fauorabilis, licet ſit contra ius aut exorbitans. Felin. *in c. nonnullis. colum. 21. de reſcript.* ergo diſpoſitio *d. auth. res quæ.* loquens in noua conſtitutione dotis locum habebit in eius augmento vt augeri poſſit, ſicut de nouo conſtitui, quando dos conſtituta in teſtamento non erat ſufficiens ad inueniendum maritum condignum pro qualitate perſonæ & familiæ. ¶ Quarto diſpoſitio *d. auth. res quæ.* non dicitur correctoria, quia ius antiquum non prohibebat in ſpecie dotes conſtitui de bonis fideicommiſſi, ſed dicitur diſpoſitio illius authen. exorbitans quaſi deuians à generali diſpoſitione iuris antiqui in
4 cauſa & fauore dotis. ius † enim correctorium dicitur quando in totum corrigitur [illegible] tollitur. [illegible] exorbitans quando in aliquo derogatur. *l. derogatur ff. de verb. ſignif.* Corn. *in conſ. 174. colum. 2. lib. 4.* Cortis *in l. omnes pœnal. colum. 39. verſ. complemento. ff. de iuſt. & iur.* modo ego habeo quod extenſio fit etiam in correctoriis quando materia eſt fauorabilis ex identitate rationis. *gloſſ. in cap. generali. de elect. lib. 6* Bart. & Doct. *in authen. ſacramenta puberum. C. ſi aduerſ. vend.* Soc. *in l. 1. col.* [illegible] *in prin. verſ. vel ſecundo dicamus. ff. de vulg.* ſi [illegible] ſic in correctoriis, ergo à fortiori [illegible] exorbi[illegible] [illegible] n[illegible] tac[illegible] ſext[illegible] dicitur quam cor[illegible] *conſ.* [illegible] *col. 1. verſ. conſtat autem. in conſ. 188. col. 2. lib. 2.* [illegible] dicitur [illegible] bus [illegible] ſuprà [illegible] eſt ergo, &c. ¶ Quinto [illegible] od [illegible] potuit *d. auth. res quæ.* procedit, [illegible] tot de [illegible] dixerim, tibi patet, quanto fortius p[illegible] cedet in caſu noſtro in quo concurrit voluntas teſtat[illegible] pre[illegible], q[illegible] pres dotari mandauit. Et ſi dicatur, ergo videtur ſtandum [illegible] on & [illegible] ipſius teſtatoris. Reſpondeo, quod [illegible] taxatio & [illegible] in terminis [illegible] *l. quod ſeruus. ff. de* [illegible] *causam* [illegible] *l. vt legatum ff. de conſtit.* [illegible] ſed mutata [illegible] & [illegible] conſtitutiones excre[illegible] runt [illegible] de [illegible] diſpoſitione [illegible] & [illegible] de tempore [illegible]. [illegible] *poſth.* [illegible] *prin.* [illegible] *quod* [illegible] *C. de poſth. her. in* [illegible] *gl.* & [illegible] *l. tale pactum §.* [illegible] *ff. de* [illegible] nos habem[illegible] d diſpoſitio *l. auth. res quæ* [illegible] tor prohibuerit hoc [illegible] *conſ.* [illegible] *7. column. 2. in 2. dub.* [illegible] dos minus ſufficien[illegible] non ſolum [illegible] buit alienationem [illegible] dotes conſtitu[illegible]
5 men ſatis non erant. ¶ Septimo [illegible] à pari procedunt [illegible] tio voluntatis teſtatoris & legis, quia eo modo interpretatur voluntas teſtatoris quo di[illegible] [illegible] Bart. *in l. 1. C. de his, quibus vt indig. & in l. in cognitione C. ad Syllan.* Alexand. *in l. eadem. C. de collatio.* ſed [illegible] *d. auth. res quæ.* procedit licet heres grauatus habeat legitimam & Trebellianicam [illegible] non ſufficiat pro dote filiæ ſe[illegible] qualitatem [illegible] vbi per Bal. Paul. de Caſt. & Mode. ergo idem [illegible] dote [illegible] non ſufficit ſecundum qualitatem [illegible], poſſit heres [illegible] augere de bonis fideicommiſſi quando legitima & Trebell. non ſufficiunt. Venio ad ſecundum dubium, in quo etiam breuiter & [illegible] concludo poſſe dotes filiæ grauati teſta[illegible] bonis ſubiectis fideicommiſſo, licet ab initio legitima & [illegible] ſuffic[illegible] quæ poſtea conſumptæ ſint. Paul. de Caſt. [illegible] *Circa ea quæ ſuperius pleniſſime. & conſ. 219. Viſis & conſideratis quæ* [illegible] *narrantur. colum.* [illegible] *lib.* [illegible] idem Paul. de Caſt. *in conſ. 80* [illegible] *ſupra* [illegible] *colum. 2. in 1. dub. lib. 1.* vbi quando mulier grauata dedit dotem marito, licet contin[illegible] legitimam & Trebell. non debet culpa mulieris contumeliam [illegible] præiudicare, quo minus dotem conſequi poſſit in [illegible] bonis fideicommiſſi, & quod reſtitui debeant dotes de bonis [illegible] commiſſi etiam conſumptis legitima & Trebell. quæ [illegible] ſufficiebant, tradit Dec. *in conſ. 376. in fin. & conſ. 510.* Iaſ. *in* [illegible] *in 3. dub. lib. 2.* Curt. Iun. *in conſ. 59. volum. 1.* Et dicit Iaſ. *in d. conſ.* [illegible] quod nemo in hoc diſcrepat. Et priuilegium competit [illegible] circa diſpoſitionē dictæ authen. res quæ. tam mulieri ad [illegible] eius filiam ſecundum Bald. [illegible] Paul. de Caſt. & breuiter Iaſ. [illegible] *verſ.* [illegible] *adde quod ſtatim.* Et ita de iure reſpondeo, ſaluo ſaniori iudicio. Sauiliani. die 6. Septemb. [illegible] Aymo Crauetta ex Sauiliano. I. V. D.

SVMMARIA.

1 *Actus noſtri voluntatem non extenduntur vltra quam* [illegible]*.*
2 *Facilius conſeruatur aliquod quam* [illegible] *de nouo.*
[illegible] *Cauſa conſeruationis libertatis eſt fauorabilis.*
4 *Qui* [illegible] *ad ſeruitutem nihil poteſt facere per quod impediatur eius* [illegible] *tutis.*

CONSILIVM CCXCII.

Pro communitate Murelli contra homines & Communitatem Polungheriæ, Conſilium ſubtile aque & vtile.

DIVINO ſubſidio ex corde poſtulato. In cauſa communitatis Murelli contra Communitatem Polungheriæ dubitatur, an ex longiſſimo poſſeſſorio ipſius communitatis Polungheriæ in depaſcendo beſtias & animalia hominum ipſius loci ſuper paſcuis Murelli dicatur acquiſita ſeruitus depaſcendi, non obſtante contradictione cuſtodum animalium hominum ipſius loci Murelli qui cuſtodes contendebant aduerſus cuſtodes animalium hominum Polungheriæ, v[illegible]

paſ-

[illegible] nonenim ſcleuat poſſeſſio [illegible] dente. l. i. § 1. ff. quod vi aut clam Paul de C[illegible] in conſi. 6 [illegible] lib. 2. Nam [illegible] illud videtur reſpondeti, quod [illegible] dictio debet fie[illegible] quorum præiudicio agitur & [illegible] quorum aut negoti[illegible], ſed hic [illegible] cōtra [illegible] cuſtode animalium, [illegible] debatur intereſſe [illegible] attendi non deb[illegible] corum, quo [illegible] eſt. l. 1. in prin. ff. quor appell. non rec. l. Prætorem. § [illegible] & l. qui [illegible] damno ff. [illegible] damn. infect. l. ſidei commiſſa. §. interdum ff. de leg. 3. cap. [illegible] de appell. [illegible] ſim. l. ¶ Rurſus cum agitur de præſcribendo [illegible] tem, neceſſaria videtur [illegible] ipſi [illegible] vniuerſitati [illegible] particulari [illegible] ex facto ſingulorum aut particu[illegible] vniuerſitatem [illegible] deri acquiri ipſi vniuerſitati. l. 1. § [illegible] ff. de acquir. poſ. ¶ Sed præmiſſis non obſtantibus, quæ [illegible] obſtare [illegible] puto de iure verius, quod [illegible] non dicatur [illegible] ſeſſio, ſeu quaſi ſeruitus, & conſequenter præſcriptio [illegible] introducta in fauorem communitatis & [illegible] minum Polungheriæ duplici fundamento. & primo, quia [illegible] bus depaſcentibus particularium Polungheriæ ſuper p[illegible] Mu[illegible] non [illegible] quæſita [illegible] poſſeſſio ſeu quaſi [illegible] communitatis Polungheriæ, tum quia non apparet qu[illegible] depaſcentia animalia hoc faceret non [illegible] ipſius communitatis, ſed nomine ad vtilitatem ipſorum particularium depaſcentium, ergo ex actib. qui fiunt nomine depaſcentium, aliis non videtur acquiri: quia actus noſtri voluntarii non extenduntur vlt[illegible] agentem. l. [illegible] § [illegible] vbi Bart. ff. de [illegible] priuat. l. volunt. C. de [illegible] pro marito. cum ſimil. Et quod actus factus nomine [illegible] ad alios non extendatur eſt text. in l. ſi vt prop. [illegible] ſpecialis C. de rei vendit. Imo etiam ex contractu [illegible] propria ſocietati non acquiritur, [illegible] acquirit ſociis [illegible] niſi eſſet ſocietas vniuerſalis omnium bonorum [illegible] vbi Bart. & Bald. [illegible] ſimil. [illegible] Alex. in conſil. [illegible] lib. 2. Cornel. in conſil. 46. lib. 1. [illegible] tum etiam quia per liberam perſonam [illegible] non acquiritur non præcedente mandato. l. ſi ego. ff. de negot. geſt. l. 1. § per procuratorem. & l. poſſeſſio. ff. de acquir. poſ. & quod ex poſſeſſione [illegible] acquiratur vniuerſitati, tradit Bal. in conſil. 45 [illegible] lib. 1. Socin. [illegible] 130. [illegible] Dec. in conſil. [illegible] Alex. in conſil. 4. [illegible] oporteret igitur probare quod [illegible] Polungheriæ mandaſſet cuſtodibus animalium [illegible] depaſcerentur in territorio & pa[illegible] oporteret probare quod [illegible] talem [illegible]

[illegible] adduco tex. [illegible] per eos qui [illegible] nomine [illegible] aut ho[illegible] dominum vel [illegible] n. Quæ [illegible] decidit hanc difficultatem [illegible] per tales perſonas retinetur [illegible] res odioſa, à fortiori conſe[illegible] tas [illegible] fauorabilis & illum text. [illegible] 172. quia omnes. [illegible] non eſt igitur dubitandum [illegible] hominum Murelli conſeruatū fuiſſe per particulares [illegible] ipſi [illegible] Murelli & ſi perſonæ omnino extraneæ, & non intereſt [illegible] retinent & conſeruant ius & poſſeſſionem [illegible] alterius, quanto magis particulares vnius vniuerſitatis [illegible] conſeruabunt & retinebunt iura libertatis ipſius vniuerſitatis in quorum iuribus [illegible] participium obtinent [illegible] tereſſe prætendunt: ¶ Secundo principaliter reſpondeo ad argumentum, illud retorquendo: nam ſi communitas Polungheriæ noluit impedimentum [illegible] quaſi poſſeſſionem ſeruitutis [illegible] ſcendi [illegible] particularium Murelli ad con[illegible] ergo fortiori ratione homines [illegible] Polungheriæ [illegible] potuerunt acquirere ius [illegible] impediendum [illegible] ſeruitutis. ¶ [illegible] eſt cauſa [illegible] conſeruationis libertatis, ſecundo, qu[illegible] tanquam contra[illegible] ¶ Concludo ex præmiſſis [illegible] hoc primum dub[illegible] iuſtitium fuit ius ſeruitutis in fauorem hominum communitatis Polungheriæ, contra quam etiam com[illegible] pronunciandum, & in fauorem communitatis Murelli [illegible] agit de tuenda libertate omnino fauorab[illegible] ff. de [illegible] teſtes deponentes de libertate præſ[illegible] deponentibus contra eam. [illegible] ¶ [illegible] talem [illegible]

fa[illegible], & [illegible] di[illegible] quod [illegible] m[illegible] ſi ſtanti[illegible] p[illegible] [illegible] por[illegible], & [illegible] *quar. §. inter [illegible] ff. locati [illegible] ff. de cond. ob cauſ. [illegible]* [illegible] intelligi[illegible] [illegible] pro ſtantibus [illegible] [illegible] cultura[illegible]. ¶ Secundo pro hoc facit [illegible] nam [illegible] [illegible] [illegible] ſti[illegible], & animum præſ[illegible] quantum pu[illegible] m. Io. [illegible] Andr. *in cap. cum ex [illegible] ſuper glo. ff. de [illegible]* [illegible] *in cap. [illegible] de decimis. & in cap. [illegible] de capel. monach.* Bart. in [illegible] *de [illegible] ff. de vſuris.* Pau. de Caſt. *in conſ. 412. quia [illegible] ſpa[illegible] in fin. [illegible]* Bald. *in [illegible]* [illegible] q[illegible] [illegible] & præſ[illegible] [illegible] Polungheriæ præſcripſerint in depa[illegible] diſtan[illegible] ibus pa[illegible] [illegible],non [illegible] extendendi [illegible] ſcriptio, vt [illegible] h[illegible] ri poſſit homines Murelli ad cult[illegible] paſcuorum [illegible] videtur præſcriptio iuris affirmatiui [illegible] endi, al[illegible] præſcriptio iuris negatiui ne paſcuum [illegible] liceat. Aliqu[illegible] nim re[illegible] uiruntur in præſ[illegible] iptione iuris n[illegible], quæ non [illegible] nec[illegible] [illegible] affirmatiuo: nam, [illegible] ubat [illegible] uum puta quod paſcua colere non liceat, nec [illegible] prohibitio ne colantur aut laborentur, & quod [illegible] prohibitioni aduerſarius conſenſerit, aut acquieuerit per tempus [illegible] [illegible] ad præſcribendum *l. qui luminibus. ff. de ſeru.* Cynus *in l. 1. in [illegible] C. [illegible]* Bart. *in l. ſi prius. in 7. oppoſ. ff. de oper. nou. nunc.* Al[illegible] *conſil. 17 [illegible] colum. 1. in fin. lib. 2.* ſed non proponitur iſtud requiſitum præceſſiſſe: & profecto non puto quod ſi homines M[illegible] voluiſſent aliquando colere paſcua [illegible] & prohi[illegible] homimbus Polungheriæ, quod tali prohi[illegible] [illegible] quieuiſſ[illegible]. ¶ Tertio, patientia hominum Murelli circa [illegible] paſtum animalium Polungheriæ, vbi de tali patientia conſtare poſſet, fuit limitata ad cauſam ipſius depaſtus, ergo extendi non debet ad cauſam prohibitionis culturæ, quod voluerint etiam ſeipſos ſubijcere, vt ne reducere poſſent eorum paſcua ad culturam, quia limitata patientia limitatū [illegible] effectum produc[illegible], nec extenditur vltra actum in quo patientia præſtita ſit Alex. *in conſil. 1. colum. [illegible] verſic. præterea etiam poſito lib. 5. per l. 1. §. ſi quis hoc interdicto. vbi* Bart. *ff. de itin. actuq. priua.* ¶ Qua[illegible], vbi præmiſſa ceſſarent, quæ ceſſare nō videntur, ex alio res videtur [illegible] claſſima. quia proponitur in facto quod homines & communitas M[illegible] ſuper proceſſit ad culturam talium paſcuorum prot[illegible] qualitate & neceſſitate, quo facto ita præſuppoſito, non poteſt communitas Polungheriæ prætendere ius prohib[illegible] culturam eiuſmodi, quia in tali prohibitione nullus adeſt conſenſus & nulla patientia communitatis Murelli, imo expreſſa condictio & facta contraria. Ideo poſito quod eſſet acquiſita ſeruitus depaſcēdi in paſcuo alien[illegible], talis tamē acquiſi[illegible] neceſſario reſtringi debet, quamdiu manet res in eodē ſtatu, & paſcuum incultum manet, non etiam extēdi poteſt ſeruitus vt prohiberi poſſit cōmunitas Murelli ab opere nouæ culturæ, nec poteſt communitas Polungheriæ prætēdere ampliorem ſeruitutem, quam vſa fuerit, ſed nūquam fuit vſa ſeruitute prohibēdi culturā; licet coleretur paſcuum, ergo, &c. Non obſtant modo allegata in contrarium, quod debes ſeruitutem nihil poteſt āgere per quod impediatur vſus ipſius ſeruitutis, quia iſtud procederet quādo quis vellet impedire ſeruitutem [illegible] [illegible] eodem ſtatu manente, puta, ſi quis includeret iter ad paſcuum ſeruiens, ſecus quando mutaretur ſtatus rei. ¶ Vel & melius ſecundo reſpondeo, quod argumētum procedit in ſeruitute expreſſe conſtituta, ſecus in præſcripta: ratio diuerſitatis eſt, quia ſeruitus præſcripta dicitur tacite conſtituta ex patientia p[illegible]s, ſed tacitum non ita extenditur ſicut expreſſum. *gloſ. in clem. ſæpe. in verb. partibus. de verbor. ſign.* Abb. *in capit. quoniam contra. coln. fin. de prob.* Paul. de Caſtr. *in conſil. 354. viſa appellatione. col. 3. circa med. lib. 1.* Alexan. & Mod. *in l. 1. §. 1. ſuper gl. in verbo, ſi quis. ff. quod quiſq. iuris.* Itaque ſi quis expreſſe conſtituat ſeruitutem depaſcendi in paſcuo ſuo, fateor quod illud ad culturam reducere non poteſt in præiudicium iuris ſeruientis, ſecus videtur in tacita conſtitutione ſeruitutis, quæ colligitur ex patiētia depaſcēdi, quia talis patientia reſtringi debet ad ſuos limites ſtante paſcuo inculto: non autem videtur extendi vt etiam non poſſit quis paſcuum ad culturam reducere. Bene fateor quod etiam in caſu p[illegible] tionis non poſſet is contra quem præſcribitur impedire [illegible] ipſa in ſtatu ſuo manente, puta claudendo ianuam, au[illegible] [illegible] do iter, ſed quod rei ſtatum pro neceſ[illegible] [illegible] [illegible] con[illegible] & natura[illegible], licet ab [illegible] [illegible] ¶ [illegible] o reſpondeo quod no[illegible] [illegible] imus [illegible] apponitur talem reſtri[illegible] [illegible] & eſſe expreſſam, quia [illegible] d[illegible] Polungheriæ animalia, licet & in hoc [illegible] circa culturam quod prohibe[illegible] [illegible] eſt, imo homines Murelli ſemper [illegible] lendū locauerunt ad arbitrium. ¶ [illegible] [illegible] [illegible] apparet ſecundum dubi[illegible] ¶ [illegible] [illegible] munitas Mur[illegible] [illegible] [illegible] Polungheriæ ab [illegible] depaſcer[illegible] [illegible] [illegible] præmiſſi [illegible] [illegible] ne nec aliter, [illegible] ſeruitutē [illegible] [illegible] nece caſu pro[illegible] [illegible] ſui [illegible] [illegible] & [illegible] quidem [illegible] [illegible] [illegible] [illegible] [illegible] MD. LVI. A[illegible] [illegible] I. V. D.

S V M M A R I A

1. B[illegible] em præſumuntur [illegible]
2. [illegible] ſuam.
3. S[illegible] ceſſion[illegible] licentius in facto propoſito.
4. F[illegible] poteſt.
5. I[illegible] modo [illegible] tuatur.
6. [illegible] communis loquendi [illegible] debet.
7. E[illegible] ſit ad expreſſionem [illegible].
8. Princeps [illegible] plenam iuſtitia.
9. Feud[illegible] iudicatur.
10. Subla[illegible] ate per alienationem [illegible] quis poteſt ac ſi nunquam [illegible]
11. I[illegible] non poteſt conſiderato dominium vtile ſeparatum à directo.
12. Alteri per alterum [illegible] conditio afferri non debet.

CONSILIVM CCXCIII.

Conſilium redditum ad acquiſitionem Magnificorum dominorum [illegible], qui ipſi a me petierunt vt votum meum ſcriptis commendarem, etiam ſi non eorum expectationi ſatisfaceret.

DIVINO ſubſidio ex corde poſtulato. Ardua admodum offertur quæſtio, an bona quæ poſſident magnifici domini [illegible] præſumantur feudalia aut allodialia ex inſtrumentis productis. Quam ipſam quæſtionem iuxta pro ingenij viribus ad ſplendorem veritatis explicare, quia in alio iudicio meo perſ[illegible] declaratur. [illegible] primo capio inſtrumenta acquiſitionis caſtri ab Illuſt. Marchione Saluc[illegible] de anno 1541. & die 2. Maij. Ex iſto inſtrumento non videtur probari aliqua qualitas feudi, imo totum contrarium: quia fuit venditum iure allodii. & [illegible] batiuit clara [illegible] dubitationi locus [illegible] ſit *Continuus [illegible] ff. de verb. oblig.* ¶ Secundo venditum fuit caſtrum nihilo [illegible], ex quo etiam arguitur allodium, [illegible] feudi retinetur dominium directum. ita ius allodii conſiderat Bal. *in conſ. [illegible] In bonis feudalibus col. 2. verſic. ſecunda rerum qualitas. lib. 1. quod videtur repetitum in conſ. 3[illegible] lib. 3.* ſequitur Dec. *in conſ. 268. col. 3.* ¶ Tertio venditum fuit caſtrum de quo poſſent domini emptores ad libitum diſponere, etiam quod res repugnat feudo, de quo non poteſt vaſallus ad libitum diſponere. *vt in tit. de proh[illegible]* ¶ Quarto, cum fuit caſtrum pecunia acquiſitum [illegible] non poteſt ex tali acquiſitione, dicitur enim venditio non feudum. Bal. *in l. qui ſe patris. col. pen. C. vnde legit. & in l. ſi quam. C. de op. liber.* Dec. *in conſ. 390. col. 4. poſt med.* licet ſuper hoc mu[illegible] poſſint, vt per Iaſ. *in conſ. 11[illegible] col. 5. in [illegible] lib. 4.* ¶ Quinto per iſtam acquiſitionem domini emptores non tenentur ad aliquod [illegible] itium feudale, [illegible] feudum dici non poteſt. Cyn. *in auth. [illegible] antepen. C. de ſacroſ. eccl.* Bal. *in d. l. qui ſe patris. & in d. l. ſi quam.* ¶ Sed [illegible] videtur vnum fundamentum quod ex aduerſo adducitur, quod omnia bona acquiſita ab Illuſt. tūc Marchione facta fuerunt feud[illegible], & tanquam feudalia recognita per ipſos emptores, quia ipſa bona potuerunt feudalia facere & ſeruitutem [illegible] ibitum imponere. *l. in re mandata. C. manda.* & rei ſuæ poteſt quis apponere legem quam vult. *l. in traditionibus. ff. de pa[illegible] l. 1. §. ſi conuenerit ff. depoſiti [illegible] ſeruus ta lege ff. de ſeruis expor. [illegible] ſet. §. ſi. ff. de ſeruit. ruſti. præd. l. vbi res. ff. de pactis dot. l. legem. C. de pactis. cum excipiunt.*

[illegible]

ſed [illegible] reſpectum [illegible] *ad l. Rhod. de iactu.* nam qu[illegible] per tertium, quia an[illegible] iſſe in [illegible] bonis. Barto. [illegible] quod pe[illegible] ad [illegible] *col. 2.* Curt. Iun. [illegible] quod P[illegible] iure communi [illegible] hominum [illegible]. Di-
2 co quod licet Princ[illegible] ſpecie, tamen ſi [illegible] cauſam à Principe [illegible] tur, talis ven[illegible] dentis aut donantis, cum vendi[illegible] res aliena. [illegible] *quod dicitur* [illegible] *de pign.* [illegible] *Satur. vendo col. 2 poſt med. lib. 1. & in conſ. 330.* [illegible] & [illegible] eſt quod dicitur ex titulo [illegible] non conferri, [illegible] concedentis, cũ ſolum dicitur titulus modificatio poſſeſſioni. [illegible] *de v[illegible] C. de reb. vend.* Old[illegible] *in conſ. 317. ſuper eo quod quæritur.* [illegible] titulus [illegible], ſuſtinetur materia præſcriptionis [illegible], quia [illegible] titulu[illegible] eſſe ſine alia præſcriptione. ¶ Sed hic dicet aliquis, præ[illegible] videntur procedere in Principe, in quo ſoli [illegible] ſufficet: nam quando Princeps quid vendit aut donat [illegible] ſtandum videtur aſſertioni Principis, quod [illegible] videntur ſubditi audiendi ſi redarguere velint Princ[illegible] de mendacio, per text. *in clem. 1. de proba.* vbi habetur quod [illegible] ditur aſſertioni Principis, vt probationi contr[illegible] catur. Tradit Soc. *in conſ. 8[illegible] col. 8. ante med.* [illegible] *lib. 3.* Ad iſtud reſpondeo, & primo quod *d. clem. 1.* n[illegible] procedere in Principe, ſed ſolum in Papa, cum [illegible] mo contrarium iuri diuino, quo iure habetur, vt in ore [illegible] vel trium ſtet omne verbũ, vel ſtabit vnus teſtis [illegible] Deut. c. 19. & Matth. 18. *c. in omni negotio. de teſtib.* & ſic nō [illegible] iure diuinum credi confeſſioni alicuius in facto proprio, nec reperitur iure diuino excepta perſona Principis. [illegible] *d. clem. 1.* ita exorbitans loquens in Papa, non videtur e[illegible] tendend[illegible] etiam ad Imperatorem, vt in terminis voluit Gem. *in conſ. 96.* [illegible] *poſt med.* Fel. *in c. cum a nobis. col. 2. in 3. not. de teſt.* Dec. *in conſ. 41* [illegible] *prin.* Curt. Iun. *in conſil. 61. colu. 5. poſt med.* [illegible] etiam De[illegible] & Cur. Paul. de Caſtr. & Soc. in [illegible] dicitur, nec allegant Gem. vb[illegible] ¶ Secundo reſpondeo, poſt [illegible] *d. clem.* [illegible] deret in Principe ſeculari, quod voluit Paul. de Ca[illegible] *an Comes. col.* [illegible] vbi [illegible]

[illegible]

[illegible]

ſent[illegible] ea ob[illegible] & vt [illegible] [illegible] puta, cum venditum e[illegible] [illegible] cum omnib. prædus cul[illegible] [illegible] territorium, ſed vend[illegible] [illegible] nam Marchio vendidit caſtrum & [illegible] cum omnibus terris cultis & incul[illegible] nent [illegible] ipſum caſtrum, & [illegible] venditio fuit limi[illegible] ter [illegible] poſſeſſiones quæ eſſent de pertinentiis ipſiu[illegible] Illud † enim participium pertinentibus, reſoluitur [illegible] uum, id eſt, quæ pertin[illegible] *gloſſ. in clemen. 1. in verbo. dignitat[illegible] ſin de præben.* Alex. and. *in conſil. 119 colum. 4. libr. 2.* Relatiu[illegible] ſine copula [illegible] & limitatiue ad eas [illegible] quæ pe[illegible] nent ad caſtrum, vt habetur *in l. ea tamen* [illegible] 3. Bar[illegible] & Do[illegible] *in l. omnes populi. ff. de iuſtitia & iure* [illegible] *ſumma Trin. & fide Cathol.* Itaque probari d[illegible] qu[illegible] eſſent illa bon[illegible] quod [illegible] habet in [illegible] probari debet [illegible] incerta [illegible] obſcura. Cyn. & Barto. & Doc[illegible] *ff. de leg. 1.* late A[illegible]xan. *in l.* [illegible] *ff. de acq. vel amit. poſſeſ.* & [illegible] ceſſioni caſtri cum [illegible] ibus ad [illegible] ius, quod pro[illegible] *in conſil. 164.* [illegible] Mo[illegible]de [illegible] A[illegible] *conſil.* [illegible] De [illegible]

[illegible]

[illegible] modo licet exp [illegible] [illegible] & [illegible] pro [illegible] & [illegible] [illegible] ſub bona [illegible] [illegible] non pro [illegible] [illegible]

6 [illegible] & [illegible] [illegible] quam [illegible] [illegible] *lum in lib.* [illegible] & [illegible] [illegible] limites & territorium [illegible] *ff. de conſtit.* late Bar. *in l. demonſtrat. ff. de condit. & demo.* [illegible] ſolum declarantur limites territorii [illegible] Liagnaſchi, prædia autem particularia non demonſtrantur [illegible] ſed ſolum demonſtratur vniuerſalitas [illegible] prout comprehenditur ſub toto territorio [illegible] venditor non intenderet vendere omnia præ[illegible] territorium Liagnaſchi, ſed [illegible] tantū quæ ad [illegible] pertinent, non poſſunt dic[illegible] deſignatione ex qu[illegible] demonſtratio [illegible] cum bona particularia comprehenſa ſub vi[illegible] non ſiant certa ex deſignatione ipſius vniuerſalis, [illegible] nim ſpecialiter ſunt demonſtranda: demonſtratio [illegible] talis non reddit rem clarum & certam, [illegible] obſcuritatem. *l. ubi tradendus ff. commun. prædio. l. [illegible] ff. [illegible]*

8 *ſer. l.* ¶ Quinto reſpondeo quod [illegible] [illegible] *l. 2. §. [illegible]* [illegible] *ff. ne quis [illegible] loco publ. l. ex facto. in prin. ff. de vulg. &* [illegible] princeps quod ſua intra volu[illegible]. § *omnes. in authent. de [illegible]* non videtur dicendum quod Marchio Saluciarum in[illegible] vendere bona particularia ſubditorum, ſed ea tantum quæ ipſius Marchionis venditoris [illegible] ſſent & ad eum pertinerent tanquam de pertinentiis aut acceſſoriis ipſius caſtri vendi[illegible] ¶ Infertur ex præmiſſis quod bona particularia ſubditorum exiſte[illegible] intra fines & territorium Liagnaſchi non dicuntur comprehenſa in venditione tam ex defectu poteſ[illegible] vendentis, quam ex defectu voluntatis. Infertur etiam quod cum bona particularia [illegible] ſubditis poſſeſſa non dicantur comprehenſa in [illegible] venditione, non potuerunt emptores qui ab ipſo Marchione cauſam habuerunt, talibus bonis alienis ſeruitutem aliquam [illegible] imponere, *l. rem alienam. ff. de pign. actio.* Imo cenſentur voluiſſe ipſi emptores tal[illegible] bona feudalia eſſe [illegible], ſed ſolum bona propria per eos acquiſita, & in ipſa venditione comprehenſa: [illegible] in talibus bonis ſubditorum [illegible] à ſubditis poſſeſſis [illegible] feudi alleg[illegible] aut præter[illegible] potest tam ex defectu poteſtatis recognoſcentium [illegible] quam ex defectu voluntatis ¶ Infertur [illegible] quod [illegible] domini Liagnaſchi poſſideant aliqua bona [illegible] fuerint ipſorum ſubditorum, in eis ius ſeruitutis feudi [illegible] non poſſunt, nec ſuperiorum ipſorum dominorum, q[illegible] ex quo prouenerunt bona à ſubditis, non præſumuntur fuiſſe Marchionis venditoris ſi non aliter id probetur. ¶ Secundo principaliter ad probationem feudi adducitur franchiſia per quam videtur probari quod omnia bona ſubditorum Liagnaſchi exiſtentia in finibus & territorio ipſius loci mouerentur de directo domino Illuſtriſſ. Marchionis venditoris & eius prædeceſſorum, quia apparet quod ipſa bona obnoxia erant ipſi domino in tredecim caſibus, & licet ſubditi ab illis oneribus ſeu tredecim caſibus fuerint liberati & exempti, tamen non videtur renunciatum directo dominio, quia loco talium onerum facta eſt promiſſio 9 [illegible] librarum Aſtenſium in ſingulos annos, præterea ipſi domini retinuerunt merum & mixtum imperium, iuriſdictionem & ſignoriam, pa-

[illegible] omnia [illegible] tutus quam [illegible] [illegible] *ff. de leg.* [illegible] de dominio [illegible] Montemalo, [illegible] *l. [illegible] C. de [illegible]* [illegible] nec [illegible] dictum fuit de [illegible] bus [illegible] bus per ipſos [illegible] nulla facta mentio [illegible] de feudo illorum de Montemalo [illegible] generalitas hominum [illegible] feudi [illegible] bona hominum [illegible] [illegible] tempus illa ſpe- [illegible] adil[illegible] Montemalo, [illegible] fuiſſent in- [illegible] *l. de [illegible] l. 1. §. & generaliter. ff. de leg. [illegible]* [illegible] retorquetur franchiſia [illegible] bit conue[illegible] feudi, dicitur de remanentibus bonis [illegible] Ergo patet quod non omnes tene[illegible] quod ipſum clarius etiam demonſtratur, [illegible] communitas habeat bona habeantur [illegible] poſſeſſiones non feudales, Ergo clariſſime [illegible] illa bona non feudalia [illegible] [illegible] eptandum. *in l. ille aut ille. § cum in verbis. ff. de leg. [illegible]* ¶ Quinto retorquetur franchiſia, poſito [illegible] quod bona fuiſſent feudalia [illegible] qualitas feudi [illegible] illam franchiſiam: ſublata igitur qualitate feudi, de feudo amplius non videtur tractandum: [illegible] aliquid nunquā fuiſſe vel extinctum aut ſublatum eſſe [illegible] ſublato ſcilicet mate 10 [illegible], eligi quis potest acti nunquam [illegible] ſuiſſet. *c. qui diligentia de electio.* [illegible] ſubreptitium [illegible] quo non fit mentio de prouiſione alterius extin[illegible], quia quod extinctum eſt, eſſe non dicitur. ita Gemin. *in con[illegible] col. [illegible].* Similiter non dicitur quæ finita ſit, ob id de tali mentio in reſcripto fieri non debet. Gemin. *in conſil. 120. colum. 1. in fin.* Anchar. *in conſil. 16. Viſo proceſſu colum. 1.* Nec obſtare videtur huic [illegible] quod dicitur non nocere extinctionem quan[illegible] reuertuntur ad dominum directum, quia tunc [illegible] in qualitatem feudalem, quia mutatione pe[illegible] qualitas rei, *l. Paulus. ff. de acquir. hered. l. [illegible] §. [illegible] de [illegible] cap. 1. de iure patrona. lib. 6.* mutata enim perſo[illegible] ſtatus. Paul. de Caſtr. *in conſil. 8. [illegible] colum. fin. Lib. 1.* ¶ Quia reſpondeo: quod in eo extincto [illegible], illud amplius [illegible] non poteſt. *l. quæ res. §. [illegible] ff. de ſolutio. l. [illegible] in fin. [illegible] in l. fin. C. de remiſſ. pign.* Contraria autem non loquuntur in re extincta, quia quod extinctum eſt ad [illegible] tranſire non poteſt. *l. cum acceſſiſſent. de conſtit. [illegible] de deſponſ. impuber.* nec poteſt conſiderari mutatio qu[illegible] in re extincta, quia non entis nullæ ſunt qualitates. *l. 1. §. [illegible] l. 4. ff. loca. l. ſi ſeruum. § ſi modus. ff. de [illegible]* [illegible] tur tractatum an mutetur qualitas feudi quod [illegible] ¶ Secundo reſpondeo quod licet mutatio perſonæ mutetur qualitas rei, non tamen aſſumitur qualitas in

 quæ

[illegible] ... minus caſtri. ... poſſideat bona ... ad dominum caſtri, ... quod ad hoc ut bona ... fiant feudalia ... poteſt con[illegible] ...

[illegible] ... eſt ... tanquam feudal[illegible]. Reſpond[illegible] ... quod ipſum etiam ... in qua probatur quod tam ... ſcriptura & ratione feudi ¶ [illegible] ... ſunt ad domino[illegible] ... tanquam feudal[illegible]. Reſpond[illegible] ... recognitione ... ſecundum antiquas recognitiones & ... ſolum [illegible] *de prœm. action.* [illegible] ¶ Secundo re[illegible] quod p[illegible] ... bonis ... poſſent dominij a feudali[illegible] ... præiudicium ipſius communitatis quo minus teneatur ... alij nocere non debet ... tenetur. [illegible] *de manumiſſio. l. ab agnato ff de curat. furio.* [illegible] Ideo dum ... communis facta ... non præiudicat ... uſufructuario non ... facti filiæ ... nec poteſt quis imponere ... in præiudicium alterius ideo vaſallus non poteſt imponere ſeruitutem feudo in præiudicium domini directi aut agnatorum. *l. fin. Cod. de reb. alien. non alien. gloſſ. in c. 1. in verb.* [illegible] *conſil.* [illegible] *lib. 6* [illegible] ... ¶ [illegible]

[illegible] ... *conſil.* [illegible] ... *de fide inſtrumen.* ¶ D[illegible] ... hæc ſcriptura ſufficiant ... ¶ Videndum eſt modo de inſtrumento recognitionis ... fundamentum eſt, quia ... recognitione fundamen[illegible] ... in bonis feudalia fuerint ... ¶ Secundo eſt ad[illegible] ... poſito quod ... ſit perfectior ... franch[illegible], quia ſi expreſſe aut al[illegible] ... illi derogatur ... *C. de appell.* ... cenſeatur derogatum ... ſe ... proc[illegible] ... regula quod ... Mode[illegible] ... ¶ [illegible]

[illegible]

[illegible] quod ipſum obſeruatum non putem. Sunt [illegible] vaſallus [illegible] teneturiurare fidelitatem [illegible] vaſallus & ex cauſa [illegible] *quali iurare debeat vaſallus domino fidelitatem* ſed non puto quod iurata ſit fidelitas ad eum modum [illegible] vaſallorum ſed ſub nomine ſubditorum & tanquam ſub[illegible] iuriſdictionis. & licet ſubditi in iuramen[illegible] quandoque excedant formam iuris communis [illegible] alitẽ, hoc [illegible] veritatem non immutat. dummodo non iu[illegible] tanquam vaſalli [illegible] poteſt [illegible] quis iurare & promittere [illegible] vaſallus [illegible] tamen non erit vaſallus. Repugnat [illegible] naturæ feudi in iſtis bonis, quia fœminæ [illegible] nantur tam inter viuos quam in vltima [illegible] libitum. ¶ Infertur expreſſius quod cum effectus [illegible] repugnent naturæ feudi, feudum dici nõ [illegible] bet, etiam quod [illegible] expreſſe in feudum conceſſa eſſent, quia ſtant repugnantia inter nomen & effectum denominatio fit ab effectu, [illegible] nomine. *l. inſulam. ff. de præſcript. verbis.* [illegible] *vbi Do.* [illegible] *ff. de donat. cauſ. mort.* [illegible] *ff. de publ.* [illegible] *Specul.* [illegible] *verſ. quarto. in fin.* [illegible] *Socin.* [illegible] *l. Gallus.* [illegible] *parente. colum.* [illegible] *C. de iure emphyt.* & alibi [illegible] Docto. ¶ [illegible] quod non ſolum [illegible] dominium ex qua regiſtratione facto [illegible] bona [illegible] allodialia *l. Paulus reſpondet non tantum* [illegible] dubium an egiſtratio alien[illegible] tamen non [illegible] reſtant [illegible] Attenſem [illegible] *colum. 2. in prin.* Imo amplius non

Ss 2 ſolum

[illegible]

[illegible] non fuiſſe [illegible] tali tranſactione [illegible], quod [illegible] & r [illegible] ſe obligaſſent ad [illegible] quia non [illegible] aliquo ad illa regiſtrand [illegible] dus contra dominos [illegible] Poſit [illegible] ad [illegible] *Angel* [illegible]

Confirmatur argumentum, quia pro bonis quæ vere ſunt [illegible] dalia & de quorum feudo vere conſtat, dominum non [illegible] [illegible] regiſtrationi: ergo probari videtur quod [illegible] bona [illegible] ſtrata eſſent allodialia, quia [illegible] *cum preter ff de* [illegible] *C de procur* [illegible] in terminis oot. Bart. [illegible] vbi quando exactum eſt vectigal pro certis [illegible] non poteſt in futurum exigi pro aliis rebus, pro quibus [illegible] non fuit: eodem modo arguendo à contrario [illegible] bona dominorum legatorum regiſtrata aliqua non præſumptione [illegible] [illegible] & ſint allodialia. Et ſine omni dubio præmiſſa [illegible] bona regiſtrata ante talem tranſactionem [illegible] ſſa infertur, quod cauſa dominorum videtur dubia quo tenus pertinet ad iura producta & in facto [illegible], & in caſu dubio fieri debet interpretatio pro allodio contra feudum *Latius de* [illegible] ❡ Circa præſcriptionem libertatis contra collectas videndum eſt, an [illegible] [illegible] ſolutus circa ſta oneta, nam [illegible] videtur præ ſcriptum [illegible] concurrenti tempore ſufficienti ad [illegible] communitas quid prob [illegible] ſufficiens ad impe[illegible] interruptionem præſcriptionis, in quo arti [illegible] ea quæ latius ſcripſi [illegible] Sauiliani 25 N[illegible] MDX[illegible] VI.
Aymo Crauetta [illegible] Sauiliano I. C.

SVMMARIA.

1 *Verba* [illegible]
2 *Verba* [illegible]
3 *Nullum verbum debet eſſe ſuperfluum* [illegible]
4 [illegible]

CONSILIVM [illegible]

[illegible]

D[illegible]

[illegible]

[illegible] m [illegible] con [illegible] mmu [illegible] co- [illegible] a [illegible] prat [illegible] c [illegible] mente .cap [illegible] ed [illegible] tali m [illegible] tae [illegible] rat d [illegible] a [illegible] mat [illegible] ddi [illegible] ide- [illegible]. Pro quo fa [illegible] t xt [illegible] quanto [illegible] ſt ma [illegible] qu [illegible] ma rode- [illegible] it po [illegible], officiu iudi [illegible] n [illegible] m. pe qu [illegible] dicunt [illegible] uo [illegible] nuit mol [illegible], ſ e- cutu [illegible] unt [illegible] qu [illegible] meritum qui [illegible] a- [illegible] Moder. *in l. quo minus* [illegible] ceim [illegible] 3. *col.* [illegible] *med.* Idem dic [illegible] ndum videt [illegible] atuto quo [illegible] o- ne [illegible] pra [illegible] lu [illegible] ſuccurri deb [illegible] mon inter R [illegible] co [illegible] roaſſi [illegible] uccurritu [illegible] priuat [illegible] [illegible] debe [illegible] vniuerſitati q æ fu [illegible] m [illegible] & [illegible] co [illegible] m priuilegio *l. vbi ff. ad mun* [illegible] *vl.* & [illegible] octo. *C. ex qui* [illegible] *cau. maior.* [illegible] *rempublica.* [illegible] *C. de iure reipubl.* [illegible] *capit. 1. de re* [illegible] § [illegible] m [illegible] ctrahunt [illegible] fun- damenta quæ adduca pol [illegible] idantur in fauo [illegible] m pa [illegible] ¶ Qui- b [illegible] tai en con [illegible] obſt [illegible] ſtuc [illegible] m tro contrarium puto de [illegible] e veras, quod [illegible] proc [illegible] n [illegible] nenibu [illegible] ſe [illegible] nentibus [illegible] dimentis. § [illegible] cor [illegible] ede [illegible] quo [illegible] a [illegible] tea [illegible] autem onetum [illegible] ¶ verba vniu [illegible] re pu ta [illegible] res, ſi be ie [illegible] tur, quorum [illegible] vniuer [illegible] ndant quæ dici vel [illegible] git in poſſunt, quia q [illegible] hil exclusit *bilitate ff.* [illegible] *confu vel relega. capit. ſolita. de maior. & obed.* [illegible] *Ro- manorum. 19. de* [illegible] quando [illegible] bonorum [illegible] ra venium q [illegible] poſſint. [illegible] cen [illegible] m [illegible] *l.* [illegible] *poſſe* [illegible] *l. mm.* [illegible] ¶ [illegible] pe [illegible] o [illegible] a [illegible] ha heretet [illegible] ene [illegible] [illegible] ii da [illegible] qui [illegible] veruni pr [illegible] ſo [illegible] *sol.* & *Doc. C. de ſi- deicommiss.* [illegible] tunc fit [illegible] Bartolus *in l. Marcel- lus. §. quidam* [illegible] verba fideicommiſſi ſunt [illegible] di [illegible] ctione eſt [illegible] op [illegible] ¶ Sim [illegible] m [illegible] tens reſtitu [illegible] de [illegible] n [illegible] ticatu [illegible] cro [illegible] debito [illegible] en [illegible] cedit quan- do fit promiſſio verbis vni [illegible] pro [illegible] ttat maritus reſtitue [illegible] totam dotem [illegible] *dote* [illegible] *dote* [illegible] *cum* [illegible] *ratione* [illegible] *mat.* [illegible] *colum.* [illegible] Dec. *in con- ſil.* [illegible] ¶ V demus [illegible] dicet lex aut ſtatu- tum gener [illegible] ſam doti Sa- lic. *in l. ſi ita* [illegible] *dote ex ta par- te prætulit* [illegible] Il [illegible] amen non procedit quando [illegible] verba vni [illegible] alta Dec. *in conſil. 3* [illegible] *colum. 3.* [illegible] *de præben.* vbi quod verba vniuerſ [illegible] comprehendunt [illegible] imp [illegible] q [illegible] n d [illegible] ad hoc erat C [illegible] *conſilio* [illegible] Bal- dus *in conſil. 316.* [illegible] *Romanorum. colum.* [illegible] vniuerſalia um [illegible] comprehendunt, ita quod [illegible] & locus null [illegible] cipitur. ¶ Ad [illegible] Balbu [illegible] *ſtatuta* [illegible] *lib. 4.* q [illegible] ſtante ſtatuto [illegible] ſta [illegible] ſt [illegible] in [illegible] nullis obſtantibus [illegible] in [illegible] tem Dec. Alciato [illegible] 4 [illegible] quo [illegible] verba vniuerſalia cum [illegible] dux [illegible] omnes perſ [illegible] comprehend [illegible] n [illegible] & ſecelſi [illegible] & princeps ſequitur [illegible] *conſil.* [illegible] *colum.* [illegible] ¶ Iam [illegible] bonorum vniuerſalium om [illegible] comprehend [illegible] tur v [illegible] ba vniue [illegible] etiam [illegible] *verba* [illegible] *Cod. de quæ* [illegible] vbi quod illa verba, & quæli-

bet al [illegible], comprehe [illegible] officium [illegible] dicet il- lu [illegible] tur [illegible] tam gl [illegible] nde- tat Al [illegible] *conſil.* 3 [illegible] 2. *ver.* [illegible] *acce* [illegible] *in conſil.* [illegible] m [illegible] comprobare al [illegible] h [illegible] & [illegible] ch [illegible] ¶ Ampl [illegible] perantur verb [illegible] lia e [illegible] b [illegible] de [illegible] a homin [illegible] ide [illegible] tum pu [illegible] te cunque omm ſtum [illegible] igi- tur [illegible] n [illegible] ip tantum. S [illegible] *c. in* [illegible] 2. *de* [illegible] ert [illegible] Alexand. *in conſi* [illegible] *colum.* [illegible] *lib. 7.* Dec. *in cap.* [illegible] *colum pe- nu* [illegible] *colum 5. verſic. 2. limitatur.* [illegible] *in* [illegible] *ff. de legibus.* [illegible] *cat* [illegible] *med.* [illegible] *conſil. 124. colum. fin.* [illegible] *in con- ſil. 47 colum.* [illegible] 4 [illegible] laſ [illegible] ualit [illegible] [illegible] no [illegible] od [illegible] nulla [illegible] it no [illegible] m Sa- lic. [illegible] ad. *in conſil.* [illegible] *aut* [illegible] n in udi- [illegible] b [illegible] mnandi ad mortem, qu [illegible] m- me [illegible], dictu [illegible] nd [illegible] adm [illegible] E [illegible] Sa ic. ten [illegible] us *col.* [illegible] *l.* [illegible] *ff.* [illegible] *non iurand.* Illud [illegible] ſtorum [illegible] tulille [illegible] nd [illegible] effi- cac am verborum vniuerſalium. Iuſt [illegible] s a [illegible] m ſed volume [illegible] pl [illegible] t ¶ [illegible] vbi in [illegible] cione de qua agi [illegible] ſolum eſſent v [illegible] ba vniue [illegible] ſi [illegible] Sumanen [illegible] lar vider [illegible] ur, qu [illegible] & [illegible] comprehenderent, quæ dici vel [illegible] ogi [illegible] p [illegible] i- [illegible] aliqua limitatione, di [illegible] nctione, & reſtitutione [illegible] cans [illegible] vel [illegible] nominati, quid ſic dicemus vbi ſunt verba vniuer- ſ [illegible] ratus [illegible] ſepe [illegible] ter [illegible] ſufficientia ad mortem [illegible] nec b [illegible] exprella [illegible] ab ſtatuto, data tamē ſtatuē- d [illegible] itate. ¶ Sed magis [illegible] terminis noſtris dico quod licet [illegible] ſtorum [illegible] berum [illegible] d- huc v [illegible] impregnan [illegible] ſufficiunt, & [illegible] Bart. *in* [illegible] *qui non po-* [illegible] prius [illegible], pe inde [illegible] e [illegible] pec [illegible] ſſet renuncia- tum. A [illegible] deo Ba [illegible] *col.* [illegible] *ff. de non* [illegible] bu [illegible] pro- m [illegible] m [illegible] itum en [illegible] u [illegible] et no [illegible] non inducitur n [illegible] ſpecialiter & exp [illegible] *Cod. de* [illegible]. Et per iſta doo [illegible] d [illegible] dec [illegible] *in conſil.* [illegible] 45 *colum penult. poſt med. lib. 1.* qu [illegible] conc [illegible] di- tur [illegible] nihil [illegible] etento, veniunt etiam iura regalia in quibus exp [illegible] ſpecialis eſt ne [illegible] ria. Sed [illegible] Iaſon. *ad-* [illegible] *C. de conſti. doc.* vbi ſtatuto quod mulier [illegible] maritus totam d [illegible] t [illegible] ta [illegible] rit [illegible] matrimonii, dicunt [illegible] legitima. legitur [illegible] *conſil.* 9 *colum penult.* [illegible] tamen in priua- tione legitimæ mentio [illegible] neceſſaria *l. ſi quando* [illegible] *C.* [illegible] Socin. *col.* [illegible] *poſthum.* [illegible] *l. quod cum* [illegible] Comes habens [illegible] te ſtatem legitimam generaliter, non poſſ [illegible] legitima [illegible] m [illegible] non po [illegible] ſ [illegible] ſet ve [illegible] bus poſſit [illegible] ipu [illegible] as dulcerinos & [illegible] qu [illegible] ue. Idem [illegible] *conſil.* 116 *colum.* 1. *verſ* [illegible] *& in conſil.* 3 [illegible] *in fi.* [illegible] *l.* & *quod verba priuilegii.* vbi tamen de Soc [illegible] mentio- [illegible] facit, ſed ſolum de quodam con [illegible] Socin [illegible] ſubſcri- pſit. C [illegible] *in conſil. 175. colum. 3. poſt med. lib. 4.* [illegible] *in conſil.* 32 *col.* [illegible] ¶ Sed adh [illegible] terminis quod iſta verba vni- uer [illegible] ad iſtos caſus [illegible] & protius in [illegible] duo [illegible] *ex. in l. Cum fratres ff. de pactis.* vbi quitatio fa- cta verb [illegible] bus [illegible] etiam ad [illegible] inotata & [illegible] & [illegible] contra r [illegible] pactum quitat [illegible] detur re- pl [illegible] ex [illegible] operatur pactum quitatio etiam quo [illegible] A [illegible] induco te [illegible] *l. ob præ- terea* [illegible] Bald. & [illegible] *C. de tranſac.* [illegible] verba be [illegible] ſtatus [illegible] licet [illegible] n- ſi [illegible] anta [illegible] quitatio [illegible] ſpecie non fuerit [illegible] tatu [illegible] d [illegible] bus [illegible] tamen [illegible] pr [illegible] cedendo aut [illegible] vp- [illegible] quæ omnis comp [illegible] udunt quæ ex cogitari poſſunt, & talis cogitatio in genere ſufficit. *l. qui mere mobilari. ff. de ſ* [illegible]

[illegible] Sed [illegible] nec quod [illegible] ſtatuta [illegible] negatiua, præcedente negatione [illegible] Sunt [illegible] ſtatuta vniuerſaliter [illegible] intelligi [illegible] Decis. [illegible] ſunt duo [illegible] ſtatuta [illegible] negatiua [illegible] Caſtr. [illegible] extraordinarium non comprehenderit [illegible] prohibitiua [illegible] negatiua [illegible] Bald. [illegible] Bar. [illegible] Ripa [illegible] Bald. [illegible] conſilia Bal. & Pauli de Caſtro [illegible] Interim ex præmiſſis [illegible] Somanenſes [illegible] verba vniuerſalia negatiue concepta [illegible] ſtatuta [illegible] limitari [illegible] A qua [illegible] Sommanenſes [illegible] Bald. [illegible] Et hic concludo quod caſus belli non comprehendebatur ſub tot & tantis verbis vniuerſalibus [illegible] de bello [illegible] inopinato [illegible] bello dictum videatur [illegible] quod [illegible] verba vniuerſalia [illegible] caſus, qui [illegible] cogitari poſſunt [illegible] armigerorum & caualcata [illegible] Sommanenſes [illegible] propter vrgentem neceſſitatem [illegible] caſus neceſſitatis [illegible]

expreſſus per tot & tanta verba vniuerſalia [illegible] reiterata, tamen [illegible] expreſſe fuerunt [illegible] de [illegible] neque [illegible] abitur, niſi trahatur [illegible] de quo. igitur [illegible] illa vniuerſalia præcedentia [illegible] cauſa [illegible] comprehendebant & maxime [illegible] lo verbo extraordinario, quid igitur operatur [illegible] preſſio ſuperadde [illegible]. ¶ Quinto pondero quod dictum fuit [illegible] ma- [illegible] non [illegible] aliquibus ſubſidiis. verbum ſubſidium [illegible] neceſſitatem, vbi aliter ſuccurri [illegible] prouideri non poteſt, ideo alimenta debita parentibus [illegible] aliter parentibus [illegible] non poteſt, appellantur [illegible] *ſius. C. de patria poteſt.* [illegible] vbi [illegible] violent[illegible] & [illegible] vbi quis per vio[illegible] Ang. *conſ.* 392. [illegible] & [illegible] quod Somanenſes [illegible] aliquibus adeo [illegible] Somanen[illegible] [illegible] omnia addiderunt [illegible] Somanenſes [illegible] verba [illegible] vbi quod verba vniuerſalia [illegible] *lib.* 6. Ioann. Andr. [illegible]

[illegible] Addo [illegible]

[illegible] modo [illegible] rollum [illegible] Idem vltra [illegible]

[illegible] tatum [illegible] de subiecti [illegible] arguitur [illegible] tam Roman [illegible] nā post tantas exp[illegible] vniuersale & [illegible] articulare [illegible] tanta repetitione [illegible] omnium [illegible] [illegible] doctoratum [illegible] ecclesiarū [illegible] Quo casu [illegible] & concl[illegible] quod vbi de generalitate [illegible] excipitur aliquis casus in quo mentio specialis [illegible] causa [illegible] tunc [illegible] generali [illegible] alio [illegible] & sic [illegible] gene[illegible] [illegible] habe[illegible] Gemi[illegible] *ad gen-dum* [illegible] *lib. 6* [illegible] *Ad* [illegible] Mode [illegible] *de confirm.* [illegible] *vel* [illegible] *m. 2.* [illegible] *pp-ratum* [illegible] *colum. 3. post* [illegible] *pondero. C. de* [illegible] & [illegible] in proposito faci. quod dicit Ripa [illegible] *colum. 3. post* [illegible] *ff solut. matrim.* vbi quod ex[illegible] pro vnius casus priuilegiati ampliat dispositionem generalem & ſub ea concludit [illegible] alios etiam priuilegiatos qui alias continebantur [illegible] dispositione immunitatis tam [illegible] excipiatur casu [illegible] priuilegiatus, dicendum est [illegible] censeri omnes alios casus [illegible] quidē [illegible] procedunt præmiſſa in casu nostro [illegible] ratio [illegible] conclusio prædicta ſolum [illegible] qui [illegible] quæ excipitur [illegible] tale ex[illegible] & [illegible] prehen[illegible] possu[illegible] [illegible] est. [illegible]

[illegible]

[illegible] non re[illegible] [illegible] verb[illegible] [illegible] quinque [illegible] & vnde [illegible] mens colligitur ex [illegible] ment[illegible] [illegible] *§. item Tubero.* [illegible] & id [illegible] ad quod [illegible] [illegible] *consil. 4.* [illegible] aut ex adiungendo [illegible] em Bal[illegible] [illegible] Bal. in [illegible]

verbo [illegible] am [illegible] d [illegible] p [illegible] quæ [illegible] verba [illegible] Paul. [illegible] Ale. *in ſecun* [illegible] *colum* [illegible] *obliga. per* [illegible] *conſil. 3* [illegible] *in fin.* [illegible] do [illegible] ¶ præ [illegible] illa [illegible] verba [illegible] & taxatiua, ex quib [illegible] Dec. in [illegible] *colum. 2. imp* [illegible] verborum vniuerſalium quod [illegible] modo [illegible] & voces [illegible] *cap. ad noſtram in ver.* [illegible] *conſ. 5* [illegible] *colum.* [illegible] ordinaria, [illegible] modo o [illegible] intelligi [illegible] *perſ. de diuerſ. de homic.* Et in terminis [illegible] compromiſſis conceſſi [illegible] vniuerſalibus quod præciſe [illegible] verba [illegible] ut Angel. *in l. præcolum. fin.* [illegible] *quæritur ff. de conſti. pecun.* Anton. de Butr. *in cap. olim de verb.* [illegible] Dec. *in conſil.* [illegible] *colum.* [illegible] *mediam. & in conſil.* [illegible] *2. colum. 2. in prin.* Maxime etiam prædicta procedunt in caſu noſtro, in quo iſta verba nihil operarentur ſi [illegible] non procederet [illegible] quia caſu [illegible] intelliguntur [illegible] & maioribus expreſſis, quando aliàs nihil operarentur. Aretin. *in conſil.* [illegible] *4* [illegible] *colum. 3 in fin. verſic. vltimo.* hoc clare patet Modern. *in c. ſi de. l. reſcript.* Et hoc pondero quod in materia etiam iſta [illegible] verba impropriantur & intelliguntur contra ipſorum naturam, quando aliàs nihil operarentur, etiam in materia [illegible] ut in ſententia. *gloſſ. in l.* [illegible] *& puto. ff. famil. erciſ.* Roman. *in conſil. 14.* [illegible] *de vere.* Ideo tenuncia [illegible] in priuilegio ſuo cenſetur tenunciaſſe iuri communi, quando [illegible] nihil operaretur, quia priuilegium nullum habeat. *l. 1. in fin. ſi quis in ius voc. non ier.* [illegible] *cap. 1 in prim. col.* [illegible] *2 3. de ius.* [illegible] quanto fortius tali verba intelligi debent propriè, [illegible] operentur circa onera de quibus agitur, cum aliàs niſi ita propriè intelligantur, maneant ſuperflua & inutilia? ¶ Decimum tertio conſidero quod res ipſa videtur clariſſima [illegible] bis [illegible] in vltima parte exemptionis. nam poſtquam contrahentes expreſſerunt omnia onera verbis ſpecialibus & aliis [illegible] ſalibus & prægnantibus, non raro repetitis, ac aliis taxatiuis, quæ nullo modo reſtringi poſſunt, volentes pinguius prouidere & voluntatem eorum præciſe magis oſtendere, conuenerunt quod homines Ruddini tenerentur præſtare indemnes So[illegible]nentes pro præmiſſis & quibuſcunque muneribus & oneribus ſupra ſpecificatis, & alio quocunque qualitercunque & quomodocunque imponendo onere: ſi nec ſcio quid aliud [illegible], niſi quod voluerunt contrahentes inuenire gradum ſupra ſuperlatiuum prout [illegible] Ouid. in Ibin, Qui mala cum tuleris plurima, plura feras quaſi dicat licet verba præcedentia ad omnia onera trahantur etiam maxima inſolita [illegible], [illegible] maius inueniatur etiam ad illud tranſactionem [illegible] volumus pertinere: & hic pondero quod in hac vltima clauſula [illegible] fuerunt repetita verba vniuerſalia, operantur enim verba geminata licet [illegible] contextu ſine aliquo interuallo proferantur. [illegible] *col. 1. colum. 8. in prin. verſ. 2. an non obſtantibus. ff. de offi.* [illegible] Et dicit Curt. ſenior *in conſ. 6* [illegible] *colum. 6. poſt med.* quod verba geminata oſtendunt magnam deliberationem & præciſam intentionem diſponentis. & dicit B[illegible] *inter conſ. illius Curtii ſenioris. in conſ. 6 7. colum. 19 ante med.* quod verba geminata tollunt omnem dubitationem. & ſi illud procedit in verbis ſimplicibus geminatis, quid dicemus in verbis vniuerſalibus non geminatis tantum, ſed vltra decies repetitis? Profecto neſcio quomodo potuiſſent contrahentes explicare mentis conceptum verbis ſplendidioribus aut clarioribus. ¶ Decimo quarto pondero quod communitas Ruddini teneretur præſtare indemnes Somane[illegible]es pro omnibus oneribus ab omnibus perſonis, collegio, vniuerſitate, & ab omnibus ſuperioribus mediatis, & immediatis, & antea dictum fuerat de omnibus oneribus imponendis per quoſcunque ſuperiores mediatos & immediatos, & [illegible] mentio de facto cuiuslibet ſuperioris. In qua re conſidero quod factum ſuperioris dicitur caſus fortuitus. *l.* [illegible] *ff. de* [illegible] Bart. *in l. exceptione circa medium ff. de fideiuſſor.* Bald. *in l. falſus co-* [illegible] *C. de furtis. & in l.* [illegible] *C. de pignorat. actio.* Paul. de Caſtr. [illegible] *tus in facto quod. cum* [illegible] *colum.* [illegible] [illegible] Cal [illegible] Bart. *in l.* [illegible] *ſi* [illegible] *ff. ſi quis cautio.* [illegible] *vltimo hoc clare patet.* Cu[illegible] *quæſt.* [illegible] ¶ Sexto decimo [illegible] [illegible] *in plano* [illegible] *de offic. procon.* [illegible] rationis. gloſſ. & Bald. *in l. 1 ff. quod metus cauſ.* [illegible] *con.* [illegible] *lum. 2. poſt med. & in conſ. 6 16 colum. 2* [illegible] *med.* [illegible] petitionem in [illegible] dicimus niſi ad oſt[illegible] mentem diſponentis in quod [illegible] qui excogitari aut cr[illegible] idere poſſent ſub cœlo [illegible] licitiſſimi eſſent: [illegible] non [illegible] plurima verba & ſpecialia & vniuerſalia ſuperflua [illegible] qua efficacia & operatione. Et [illegible] optime [illegible] quod in [illegible] tum in propoſito ſcribit Dec. *in conſ.* [illegible] *colum. 2.* [illegible] licet aliquid nominatim aut in indiuiduo exprimi debeat, [illegible] verba, quæ nihil operarentur niſi trahantur ad illud [illegible] de eſt [illegible] nominatim, & in ſpecie illud expreſſum eſt. Quod procedit etiam in materia [illegible] puta exheredationis, [illegible] pater exheredat filium cum vnicum [illegible] eſt ac ſi non natum illius exheredatus eſſet [illegible] non poſſit exheredatio. *l. 2. ff. de liber. & poſthum.* ¶ [illegible] aduertatur ad vitam, vt verba operentur, multa [illegible] in diſpoſitione, quæ aliàs non venirent, adeo appe[illegible] herdis venit legatarius. Bald. *in l.* [illegible] *quæſt. 34 ff. de rer. diuis. & in cap.* [illegible] *prin. colum. penult. de prohib. alien. feud. per Federic.* Secundum Dec. *in d.* [illegible] *conſ. 48. colum. 2. in fin.* quanto fortius in caſu noſtro, vbi tot tantaque verba cum tanto miniſterio prolata operentur, dicemus venire caſus omnes [illegible] licitiſſimos, [illegible] verba ipſa vniuerſalia etiam abſque tanta repetitione de natura ipſorum ſunt apta comprehendere & de propria ſignificatione, vt ſupra viſum eſt. ¶ Decimo quinto conſidero quod hic non agitur de aliquo priuilegio aut ſimplici conceſſione immunitatis, ſed agitur de tranſactione facta ſuper dubio, quia ante tranſactionem latum erat laudum per quod Somanenſes tenebantur [illegible] minori quantitate quam promiſerint per tranſactionem, [illegible], ideo per annos triginta ſolum ſoluerant groſſos 48. in ſingulos annos per tranſactionem autem ſoluunt [illegible] & cum ante tranſactionem quærerent Ruddi[illegible] onera imponere Somanentibus ipſi ſe opponebant & deducta erat res ad iudicium: quæ ipſa omnia probantur ex lectura tranſactionis, ob id cum ſimus in tranſactione propria, & vera, illa releuari debet, non etiam reſcindi ex cauſa læſionis vltra dimidium. *tex. a* [illegible] *Lateno m l. ſi quis alter. ff. de verb. oblig.* & licet Moder. velint etiam [illegible] reſcindi quando læſio vltra dimidium valde eſſet [illegible], tamen talis læſio probata non eſt neque probari poſſet, quia difficillimum eſſet probare dubium illum litis euentum iuxta ea quæ ſcripſi in conſ. 1015. Imo læſio nullo modo [illegible] conſiderabilis, etiam ſi eſſemus in ſimplici conuentione aut pacto non etiam tranſactione, quia talis conuentio habet ſe ad [illegible] modum & incommodum, *tex. a l. de* [illegible] *C. de tranſ.* & l. vt deductum eſt per Dancum Balbum, in quæſt. ad [illegible] tunum dictum Iacobi de Chio [illegible] *inter con. illius Calcar. in conſ.* [illegible] *6.* vbi ſi tutor pupillæ gratia ſit[illegible] commiſſo det pecuniam [illegible] ſtituto vt renunciet [illegible] commiſſo, deinde [illegible] matrimonium facta maior non poteſt repetere [illegible] pecuniam datam per tutorem dicendo [illegible] læſam, qu[illegible] ſubſtitutio [illegible] ſeptus [illegible] cum hoc dependeret [illegible] caſu [illegible] bio

[illegible]

[illegible] ſine dubio, [illegible] *ſtitum.* *ſi quis cautio.* [illegible] & Alexan. [illegible] *extra commodati* Alexand. *in l.* [illegible] *in conſil.* [illegible] *colum. fin. verſic.* [illegible] *in conſil.* [illegible] quod [illegible] fortuitum [illegible] opinio [illegible] pecu[illegible] Sed non [illegible] putandum [illegible] Bart. [illegible] ſolummodo [illegible] non procedit [illegible] *§. quæſitum* [illegible] Bart. probatur per te[illegible] *in d.* [illegible] *§.* [illegible] *mento. ff.* [illegible] *contrah.* [illegible] arguendo a ſpeciali [illegible] caſus fortuitus inſoliti propter [illegible] quia alias [illegible] promiſſionis [illegible] intelligatur de caſu fortuito inſolito [illegible] quod [illegible] verba poſſint operari, [illegible] Sed [illegible] ſequor opi. Bar. [illegible] contra partem, quia in caſu noſtro [illegible] [illegible] vniuerſalis, & particularia ac ſpecialia [illegible] ſpecialia inſtrui includantur caſus omnes vtcunque inſo[illegible] ſupra latiſſime viſum eſt. ¶ T[illegible] reſpondeo quod Rud[illegible] in iſta tranſactione [illegible] perunt in ſe omnia alia onera [illegible] fortuitum quo caſu fortuito ſæpius expreſſ[illegible] ſunt, [illegible] ſupra conſideraui in decimo quarto fundamento: ideo vt [illegible] caſuum fortuitorum aliquid operetur, intelligi [illegible] de omnibus caſibus fortuitis, vtcunque inſo[illegible] non per ſimplicem ſuſceptionem caſuum fortuito[illegible] omnes caſus fortuitos *l. quæ fortuitis in ſin. C. de pignor.* [illegible] *§. quæſitum. column. 2 poſt medium* & ibi Iaſon *colum. 7.* Cornelius *in conſil. 228. column. 3. circa med. libr. 2.* Itaque vt tanta re[illegible] caſuum fortuitorum aliquid operetur, neceſſe eſt dice[illegible] intelligi [illegible] tranſactionem etiam de caſibus omnino in[illegible] Quod ipſum ſine dubio videtur procedere ſtante ſpe[illegible] expreſſione caſuum fortuitorum tot es reiterata & aliis expreſſionibus vniuerſalibus quæ ſpecialibus æquipollent vt ſupra oſtendi. ¶ Quarto reſpondeo quod omnis caſus for[illegible] tuitus dicitur inſolitus. Cornel. *in d. conſil. 13. col. in penult. in fin. lib. 2.* & *in d. conſil. 12. colum.* [illegible] *poſt med. lib. 4.* itaque cum de caſibus fortuitis [illegible] dictum fuerit, neceſſario videtur intelligendum etiam de [illegible] ¶ Quinto reſpondeo quod dictum Barto. non videtur [illegible] in caſu noſtro, in quo dictum fuit etiam de caſibus non cogitatis. Et hic [illegible] quod caſus non cogitatos trahebat tranſactio propter vniuerſalia & prægnan[illegible] *d.* [illegible] *ff. de pact. & d. l. ſub prætextu ſpeciorum. C. de tranſactionib.* [illegible] *de dictum* [illegible] in ſpecie dictum ſit etiam de caſibus non cogitatis, neceſſario oportet intelligere de caſibus omnino inſolitis & non cogitatis in genere nec in ſpecie: alias illa expreſſio caſuum non cogitatorum cum magno miniſterio appoſita, de nihilo operabitur. ¶ Sexto reſpondeo quod dictum Bartol. *in d.* [illegible] *quæſitum & in dict. leg. Seio. §. 1. ff. de annuis legat.* non procedit in verbis vniuerſalibus negatiuis, quæ fortius negant quam affirmatiua affirment, vt ſupra dixi allegando [illegible] Paulum de Caſt. *in d. conſil. 170.* [illegible] *in fin. libr. 2.* Et ſic aliud ſuſcipere in ſe omnes caſus, aliud nolle teneri pro aliquibus caſibus. ¶ Septimo pro reſponſione repeti poſſunt omnia fundamenta ſupra facta in fauorem Sonzanorum, ad quæ me remitto. ¶ Non obſtat dictum Cornelii *in d. conſil. 23. libr. 2.* [illegible] *in d. conſil. 12.* [illegible] 4. quod ſuſcipiens in ſe caſus improuiſus non videtur teneri de caſibus inſolitis in ſuperlatiuo gradu: quia Cornel. ibi loquitur quando quis ſuſciperet in ſe omnes [illegible] fortuitos vniuerſaliter, [illegible] indefinite & longa eſt differentia [illegible] indefinitam & vniuerſalem, cum indefinita non ſemper æquipolleat vniuerſali, vt ſupra dictum eſt. & ſi Cornel. idem [illegible] verbis vniuerſalibus, male loqueretur & contrariaretur [illegible]

[illegible] vbi [illegible] aliud [illegible] ¶ [illegible] in [illegible] & perceptus [illegible] *§. itaque cum* [illegible] appellatio [illegible] propria alias [illegible] vniuerſa [illegible] tunc venit [illegible] ¶ [illegible] in ſcriptura [illegible] non cogitatis [illegible] [illegible] ¶ [illegible] *generali ff. de* [illegible] in obligatione bonis [illegible] veniunt. Decan. *omnia ſupra* [illegible] *circa med. de reſcript. & in conſ. 189. col. fin. circa* [illegible] Corn. *in conſil. 128. col. pen. poſt med. verſic. nec obſtat quod non veniunt lib. 3.* [illegible] not. per Bartol. *in* [illegible] *plurib. poſt med. ff. de leg. 2.* [illegible] tam ampla & prægnantia non attenditur verſimilis [illegible] in ſpecie vel in genere [illegible] cogitatum [illegible] rudo conſideratur [illegible] omnia comprehendi [illegible] dicitur [illegible] quod [illegible] idem in clari [illegible] *conſtituimus § cum ita. ff. de* [illegible] *quæ ſidem. de ſpon.* [illegible] ¶ Quinto reſpondeo [illegible] argumentum quod non [illegible] nec in ſpecie, de iſti [illegible] non [illegible] in tranſactione, de qua agitur dependente a dubio euentu fortunæ [illegible] quæ pertinere poſſit ad [illegible] Rud[illegible] & ad incommoda [illegible] allegando in terminis Socinum *in conſ.* [illegible] bellum conditio Ruddino [illegible] periſtatum [illegible] nem, & licet in [illegible] aliquo tempore [illegible] ducias onera videantur grauiſſima, tamen aduerſi [illegible] perpetua eſſe non poſſe teſte ſtante Propheta, Pſal. [illegible] tes quæ bella volunt. & Pſalm. 54. Et non dabit in æternum fluctuationem iuſto. & Pſalm. [illegible] De torrente in via bibet, propterea exaltabit caput. & Pſalm. 33. Hic pauper clamauit & dominus exaudiuit eum & ex omnibus tribulationibus eius liberabit eum. Ideo tranſactio bell[illegible] fiet compenſatio, quæ etiam compenſatio fieri debet habito reſpectu ad commoda percepta ex tranſactione ante bellum, ſicut dicitur de conductore petente remiſſionem penſionis [illegible] debet compenſare vbertatem vnius anni cum ſterilitate alterius anni, vt habetur *in cap. ſi propter. extra. locat.* ¶ Sexto reſpondeo quod cum facta fuerit mentio de ſuperuideo & ſubſidio [illegible] facta mentio de [illegible] nenbus inſolitiſſimis, quod ſuperuideo [illegible] & ſubſidium conſideratur in caſu extremæ neceſſitatis, quando aliter ſuccurri non poteſt, vt ſupra oſtendimus. Subſidium [illegible] tandem quod vltimum & extremum auxilium [illegible] *l. propter aulum. §. final. cum gloſſ. C. de iud.* vbi quod minor non reſtituitur aduerſus lapſum inſtantiæ [illegible] ſubſidium quando tutor vel curator cuius culpa perit, ſoluendo non eſt. Similiter ex[illegible] annullatur in ſubſidium, id eſt, quando [illegible] ſoluendo non eſt, *iuxta not. in l. eleganter. in princip. ff. de dolo* Paulus de Caſtro *in conſilio 345. Sane dicamus volumin. 2.* [illegible] Simi[illegible] ſubſidium inhabiles admittuntur in defectum habilium *l. vn.* [illegible] *de decurio. l. vt gradatim. ff. de muner. & honor.* Et infinita id genus [illegible] referre poſſem. Ex quibus apparet quod verbum ſubſidium refertur ad vltimam & extremam neceſſitatem quando aliter ſuccurri non poteſt, & ſic voluerunt Sonzani ipſi horum [illegible] improuiſorum caſuum ſubſidii & extremæ neceſſitatis Ruddinorum, [illegible] cogitati [illegible] non ſolum in genere, ſed etiam in ſpecie [illegible] in [illegible] neceſſitas [illegible] cumberet. ¶ Septimo nego quod caſus belli de quo agitur [illegible] catur inſolitiſſimus, cum belli flagellum ſit [illegible] etiam populi, quia propter peccata veniunt [illegible]

[illegible]

... de ... [illegible] ... vnguard. ... [illegible] ... *conſ. 42 vol. 4.* ... ſequuntur Doct. ... volunt quod ... veniunt ... incogitat ... Cornel. po... et procedere ... et quando ... diceretur de caſibus non præuiſis ... currentibus tot & tantis verbis, ... bus & ... taxatiuis, & præciſis quæ alias non operarentur. ¶ Non obſtat vltimum argumentum quod priuilegium ... propter detrimentum enorme ſuperueniens *d. capit. ... de decimis*, quia diuerſa eſt ratio priuilegii ... fac. ... deinceps poteſt reuocare priuilegium de plenitudine poteſtatis ſine cauſa, *gloſ. ... de regul. iur. lib. 6.* Baldus *in conſil. 439. Amplius ... lib. 3. ... conſil. ... 30. Addendum tamen ... lib. 5.* ... *in l. ... ff. de priuileg. credit.* ... de probat. ... tractus ab ... factus ex cauſa ſuperue... non debet *l. ſi ... C. de ... emptio ... de ... Cod. de ...* Hinc vidimus ... in contractibus non ... læſio ex læſione ſuperueniente, ſed oporteat eſſe læſionem de tempore ipſius contractus. *l. ſi voluntate in fin. C. de reſcind. vendit.* Bartol. & Doctor. *in l. 2. C. eodem tit.* quod procedit etiam in Eccle... *ad aures ... de rebus Eccleſiæ non alien.* Calder. *in conſil. 5. in titul. de rerum per mut. cum ſimilibus.* ¶ Non obſtant not. per Moder. *in l. qui ... quæſt. 22. ff. de ...* quia loquuntur Doct. in ... diuerſis & diuerſam rationem habentibus, ... quando fit promiſſio ex cauſa lucratiua. Sic ... Doct. promiſſionem ... valde ... Anchar. ... Doct. *in d. cap. 4. de conſtit. cum ſimil.* ... per Iaſon *in d. l. qui ... quæſt. 22. & in l. ... colum. ... de verb. ...* ... argumentum, quia hic ... de cauſa ... argumentum ... [illegible]

[illegible]

[illegible]

D[illegible] ... ante ... in e... A... æ d... o e... omnium ... D... ad ... prædece... fil... Breuiter ... ſtitu... duit ... filii maſcul... toris. Iſta eſt d... *vlt. in fin. ... dubium colum ...* Soci. *in conſil. 52.* ... *in conſil. 298. lib. 3.* ... idem tenet Decius ... *med. & in conſil. 4...* ... tius, Cagnant ... præ... an teſtament... dicatur nullum, & ... Breuit. licet tal... nullum, tamen ... propter ... tenetur ... hereditatis here... teſtamento. Bartol. *in l. ... quæſtio. 5. 7. ... 12. ff.* ... *in l. ex ca. §. ... verbis per ... ff. de teſtam.* Alexand... *colum penult. lib. 1.* Dec. ... *in l. poſthumo. colum. ... poſſeſſ. contra tabul.* & ... Doctor. ¶ ... quantū poſſit detrahere iſta ... ſolæ codicillaris. Breuiter, licet videretur ... toris non obſtat quod ... velleianicam, ... eſt quod ... here cum grauamento ... Bar... ... [illegible]

... Propterea quod ... A... conſil... dubium ... qu...

[illegible]

[illegible]

CONSILIUM CCXCVII.

[illegible]

[illegible] ¶ Secundo [illegible] tiſta bona [illegible] plenè [illegible] & [illegible] ¶ Tertio tactum [illegible] bona [illegible] non modicos [illegible] bona hereditaria cum [illegible] expreſſum fuiſſet, non [illegible] non [illegible] eſſe non debent, [illegible] Nos [illegible] *quia vero* [illegible] in text. [illegible] Calderin. [illegible] bonis ſint [illegible] Pſalm. [illegible] ore impiorum [illegible] & ſic pondero quod [illegible] in pauperum [illegible] Cruciatæ pro [illegible] & ſuſti [illegible] & inquiſ [illegible] illud Pro [illegible] pene effuſi [illegible] homines Cruciatæ [illegible] tot bonis met-

[illegible] *lib. 2.* Decius *in cap. ſi quando. colum. 3.* [illegible] *in conſil. 188.* [illegible] ſimiliter clauſula ex certa [illegible] temnari [illegible], vt per [illegible] *in cap. 1. col.* [illegible] *de confirm.* [illegible] ¶ [illegible] 5 tibus, quia non tollit vitium ſubreptionis, [illegible] expreſſa. Bal. *in conſil. 90.* [illegible] *lib. 1.* Corneus *in conſil. 245. colum. 2.* [illegible] nus tollit vitium obreptionis cum [illegible] tio: ſi [illegible] dictum eſt. ¶ [illegible] principaliter [illegible] dicta confirmation [illegible] Cruciatæ obtinuit [illegible] næ d. Stephani V[illegible] bet, non ſecundum [illegible] Baptiſtæ de V[illegible] mationem [illegible] tioni [illegible] in [illegible] *verſicul.* [illegible] *parte autem al* [illegible] *lum. 2. circa* [illegible] *in conſil.* [illegible] *1. colum.*

[illegible]

[illegible]

[illegible] ſtanti[illegible] non [illegible] man. in conſ. 436. quod [illegible] in verſic. 3. quia. ¶ Quarto [illegible] rogatum eſſet [illegible] detur nulla cum [illegible] tium ex multiplic[illegible] ta deduc[illegible] ¶ [illegible] ad pauperum compendi[illegible] tima S[illegible] Apoſt[illegible] Rotæ Se[illegible] Sauilia[illegible] Januar[illegible] M D XLVII.

S V M M A.

1 An [illegible]
2 Aequalis [illegible] inductio præſumptionem [illegible]
3 In quo caſu valeat argumentum ab eo quod [illegible]
4 In quolibet materia verba debent intelligi [illegible]
5 Vna pars iſtam [illegible] alteram [illegible] & præcedens [illegible]
6 [illegible]
7 Verba [illegible] referuntur

CONSILIUM CCXCVII.

Conſilium non vulgare pro Spec. dominis Thoma & Bernardino de Canariis fratribus & ciuibus Saluciarum.

D[illegible] idio ex [illegible] de poſtulato. Verb[illegible] gaun[illegible] Thomæ & Ber[illegible] Canariis [illegible] con[illegible] & [illegible] ius teſtat[illegible] in loco [illegible] Saluc[illegible] ¶ [illegible] exd[illegible] B[illegible]

[illegible] tam [illegible] no [illegible] ſul- [illegible] il [illegible] de [illegible] præm [illegible] operationis [illegible] verba vniuerſalia geminata quæ em- [illegible] oſtendunt mentem diſponen- [illegible] *in inc. aqu. tratus. 2. quæſtion. 3.* ſi enim [illegible] ædificatas & non ædificatas in [illegible] intendo illa verba vniuerſalia omnes [illegible] ſtine, [illegible] bium quod veniſſent omnes [illegible] apponendo illa verba vniuerſalia ge- [illegible] cunque [illegible], aut illa nih [illegible] operabat [illegible] enim & debet [illegible] tam mentem diſponen- [illegible] regulas, aut [illegible] operatur, nece [illegible] xiſſe teſta [illegible] & de domib. extra [illegible] ne ciuitatis ſuburbia intelligerentur [illegible], ad ipſam ciuitatem. ¶ Quinto conſidero [illegible] materia indifferenti [illegible] quatenus diuerſitatis [illegible] teſtator magis voluerit legare domos in [illegible] luciarum quam extra, quia quando locu- [illegible] Carmagnoliæ, expreſſit etiam domum ſi- [illegible] quæſo quare magis voluerit teſtator le- [illegible] Carmagnoliæ quam extra muros ci- [illegible] differentia di [illegible] ciuitat [illegible] etiam ſuburbia continet per [illegible] quod maior ratio erat legandi do [illegible] Sextum, quia legatarii habitabant prout [illegible] Carmagnolia, ob [illegible] domus illa extra [illegible] et eorum votis & delectioni [illegible] extra locum Carmagnoliæ. Et ſi dicas, quare non [illegible] etiam de domo ſita extra muros Salu- [illegible] expreſ [illegible] locum Carmagnoliæ, dicas [illegible] reſpondendo ad contra [illegible]. ¶ Sexto co [illegible] quod nece [illegible] oportet intelligere [illegible] etiã de domo extra mu- Saluciarum, quia domus quæ ſunt intra muros ſitæ, ſunt in eodem loco via publica inter media, & vna domus conſuerit [illegible] alteri. Ideo ſi teſtator [illegible] dixiſſet de domibus [illegible] omnes de [illegible] vbicunque [illegible] vbicunque, den [illegible] multitudinem [illegible] dicere vbic [illegible] quod in quolibet loco. *cap.* [illegible]

[illegible] habere [illegible] ¶ [illegible] poſſe [illegible] ita ibi [illegible] quia [illegible] taliter loqui [illegible] Sic tam [illegible] expreſ [illegible] quæ [illegible] Carmagnoliæ habere. ¶ Non [illegible] voluntas teſtatoris [illegible] bonorum. *l. non aliter. ff. de leg. 3.* [illegible] *conditionis* [illegible] *demon. cum inſtitutus ſimul.* & per M [illegible]. Sed volũtas teſtatoris non [illegible] magis [illegible] ſet quam ex verbis vniuerſalibus g [illegible] habent & deliberatiſſimam [illegible] vt ſupradictum eſt. ¶ De [illegible] diſpoſitio [illegible] debet ne reſultet contrarietas. *l. in ea. ff. de* [illegible] *ſtituendis. C. de teſtam.* [illegible] recedi [illegible] à propter contrarietas [illegible]. Gemin. *in conſil.* [illegible] *circa princ. verſ.* [illegible] *de leg.* [illegible] poſſem [illegible] eſſe po [illegible] doctrinis. Se [illegible] verbum [illegible] deretur in teſtatore contrarietas [illegible] mos vbicunq; ſitas, ædi [illegible] & nõ [illegible] voluerit legatum ſeilicet [illegible] domos [illegible] enim [illegible] aperte [illegible] & contr [illegible] uerſalibus geminatis, q [illegible] magi [illegible] quam l [illegible] omnes domos & [illegible] quod ſolum volu [illegible] domos intra mu- mo, [illegible] voluntas teſtato [illegible] verũ [illegible] teſtatorem id [illegible] vbi Alexand. & Mod. *ff. de liber & poſth. l.* [illegible] *mulier. 1. in princip. ff. ad Trebell. l. 3. C. de teſtā. &* [illegible] *d. inſtit.* & qui argunt à veriſimili, argu [illegible] quia veriſimi [illegible] *Mart* [illegible] *lib.* [illegible] habet [illegible] *Cum quæſtio in fin.* & [illegible] allegans veriſi [illegible] textum legis pro ſe ex [illegible] mandat [illegible] obſeruari debere. *l. ſemper in ſtipulationibus. ff. de regulis iuris.* S [illegible] ſo reſpõdeat mihi qui in ſola [illegible] one de [illegible] do intentio diſponentis eſt [illegible] ſuis diſ [illegible] ſtatuit [illegible] uerſalibus [illegible] & pugnan [illegible] natiuæ [illegible] Pr [illegible] ne [illegible] re. [illegible] qui [illegible] quid [illegible] ut doct [illegible] bus non [illegible] ſalibus [illegible]

[illegible]

... Decis. 208 ... [illegible] ... ſed ... [illegible] ... Carma ... [illegible] ... legatum de ... [illegible] ... ex tali incluſione aut expreſſione non debe ... [illegible] ... excluſionem domus extra ... Saluciarū, vt ... ſub legato. ¶ Non obſtat tertium & vltimum ... [illegible] ... quod in dubio teſtator cenſetur minus grauare heredem ... quam poſſibile, & quod itaut interpretatio legati ſtricte concipi ... [illegible] ... in fauorem heredis, quia heredi ... dit ... legatum ... perſonæ, vt ... quem teſtator ... habere ... interpretationem, quia ... interpret ... heredem, vt ſupra probatum eſt, & ... ſanguinis, agnationis ... & magna affectio, vt ſupra ... [illegible] ... ¶ Secundo reſpondeo, quod argumentum ... procedit quia heres magis cenſetur dilectus quam legatarius ... perſona magis dilecta, ſed hic ... [illegible] ... heredes, & vltra titulum inſtitutionis ... tot prælegatis non tenuis ... ideo ... interpretari debet in fauorem ... [illegible] ... in ceſſantem rationem ... ſanguinis & agnationis. ¶ Poſtremo conſidero ... quod ipſi magis indigebant & indigent domo ... [illegible] ... Saluciarum ... habent omnium celeberrimam & ampliſſimam, quod ... coniunctus & concius minime ignorabat, itaque dicendum eſt quod intentio teſtatoris fuerit ... [illegible] ... indigerent ... [illegible] ... conſeatur ... Bald. *in conſil.* ... *Pater* ... *colum* ... *lib.* ... *per text.* ... § *quod* ... *de verbor. ſignif.* ... *quod Labeo ff. de carb. edi.* & profecto ... [illegible] ... fuit teſtator per verba tam ... & prægnantia ... ¶ Ex ... [illegible] ... de iure ... [illegible] ... Sauliano ... [illegible]

[illegible]

CONSILIUM CCXCVIII

Conſilium, ... [illegible] ... offerendi pro Magdalena ... ex Sauliano, contra ... rum Didoli

D[illegible] ... Saulis ... [illegible] ... deco ... [illegible] ... Magdal ... [illegible] ... de Saulis ... [illegible] ... ipſius ... mnes ... Didoli ... ¶ Quibus omnibus ita geſtis & impletis ... iudicium ... memoratam Magdalenam, vtendo ... offerendo bona ... per emptores ... dotibus. Quæritur quid iuris? Videretur dicendum primo fronte eſſe locum iuri offerendi, & conſidero quod duplex in hac materia videtur ius offerendi, vnum quod competit poſſeſſori conuento hypothecaria, & iſtud competit cuilibet poſſeſſori etiam malæ fidei & iniuſto. *leg. Paulus* § *ff. quibus modis pignus vel hypotheca ſolu. gloſſ. in l. mulier. in verbo iniuſtus ff. qui potior. in pign. hab.* Angel. *in* § *item ſi quis in fraudem colum. penult. ante medium Inſtitut. de actionib.* decis. Neapol. *deciſ.* ... & ratio eſt, quia creditor agens hypothecaria non ... ad rem præter ... quod ... debitum ... poſſeſſor etiam iniuſtus offerre debitum ... ex voluntate creditoris, ... iſtud ius offerendi competens poſſeſſori ... eſtationem ... Bart. *in l.* ... Baldus ... *lib.* ... deci. Neapol. *deciſ.* 187. vbi tamen voluit Afflictus admitti purgationem moræ. Alter in modus offerendi competens creditori, non ratione poſſeſſionis, ſed ratione hypothecæ, puta ſi debitor priori creditori pignus dederit, aut inſolutum dederit, nam poteſt ſecundus creditor pignus auocare a priore creditore offerendo debitum, vt habetur in *l. 1. C. ſi antiq. credit. pign. vendit.* Poteſt enim ſecundus creditor liberare pignus a primo creditore, & conſirmare ſuam hypothecam ... *ff. qui potior. in pign. hab. & in l. 1. C. eod.* & ... ius offerendi competens creditori hypothecario videtur ... æquitatis, vt ſi pignus ... ſecundi ... creditoris pertineat illud plus ad poſteriorem ... enim ... ius ſuum conſequatur. ¶ His ... præmiſſis & conſideratis dicendum videtur ... Fermino agenti ... iudicat ... bonis per emptores condemn ... Competere tamen videtur ex alt ... [illegible]

[illegible]

Paul. de C[illegible] *mod. libr.* [illegible] dendum [illegible] effectum age[illegible] igitur cum no[illegible] hypoth[illegible] ditore venden[illegible] nem pignus d[illegible] eum [illegible] actionem [illegible] *ap. ſi decad.* [illegible] ſuper alter[illegible] diſſoluta eſt hypotheca cum [illegible] [illegible] ꝙ ſine hypothe[illegible] in hoc [illegible] ne. Aut [illegible] endition [illegible] & [illegible]

[illegible]

potuit ſtatim cum [illegible] non debet ad acc[illegible] qui diſtulit falſi accuſa[illegible] *Quidam tabell. in ſit. libro 1.* [illegible] contra eum qui [illegible] *conſilio 254. Caſus talis eſt* [illegible] *tam, volumus.* P[illegible] *in conſil. 281 In cauſa iſta* [illegible] *col. vn. 1. poſt* [illegible] *ante med. libro 1.* [illegible] poſuit [illegible] erminum [illegible] tacuiſſi tanto t[illegible] ab initio [illegible] offerre æſti[illegible] tionem litis [illegible] antequam fieret ea ceſſio & remiſ[illegible] per em[illegible] d[illegible] & contemptum bo-norum [illegible] prædio [illegible] tempore execu[illegible]. Neq; app[illegible] cuiſſet animum [illegible] ipſum illud ius offerendi & recuperationem bonoru[illegible] eodem [illegible] ſtante tempore & perſeuerant[illegible] mutate precio [illegible] æſtimationis bonorum, itaq; deſiderium ipſius Fer-mini [illegible] omni æquitati naturali petendo nunc bon[illegible] per ius offerendi aucto precio bonorum, quæ ipſa no[illegible] tiq. deſiderat precio extenuato aut diminuto *l. rem. C. de reſcin. vend. l. pe-nult. C. de ſolutio.* ❡ Nec obſt. reſponſio aduocati partis quod ab initio non poterat Ferminus vti iure offeren[illegible] quia oportuiſſet eum offerre integras do[illegible] cum non [illegible] credi[illegible] recipere particularem ſolutionem, quia ſupra reſponſum eſt duobus modis. Et quo magis excu[illegible]tiones ad [illegible] Ferminus quærit eo ſplendidior contra eum laborat inij[illegible] ❡ [illegible] apparet nō obſcure cauſam memoratæ viduæ M[illegible] non modo legibus iuriſq; rationibus & authoritatibus co[illegible] ver[illegible] etiam ab ip[illegible] natur[illegible] æquitate adminicul[illegible] non breui ſuſcipere ❡ Soluimſuper [illegible] contraria reſp[illegible], quæ ipſa [illegible] prætextis abunde ſatis [illegible] prob[illegible] tantum vt ſplendidior fiat res, reſpondeo ad [illegible] quidem [illegible] primu[illegible] argum. quod ius offerendi [illegible] creditori hypothecario, & quod [illegible] habet hypothecam in iſtis [illegible]onis, negatur quo[illegible] habeat [illegible] pothec[illegible] illam amiſit edendo & vendendo bon[illegible] ipſis de Molinetis. text. eſt clarus *in dict. l. ſi cum venditor ff. de euic.* & cum [illegible] amiſſa, illa amplius reuiuiſcere non poſſit ex aliquo caſu ſuperueniente *d. l. fin. Cod. de remiſſio. pignorum.* facit text. *in l. nouat. ff. de nouat.* & declarat *Bart. in l. ſicut. §. ſuperuacuum. col. 2. verſ. venio ad* [illegible] *ff. quibus mod. pign. vel hypot. ſol. & latius in d. l. fin. C. de remiſſ. pig.* ❡ Secun[illegible] reſpondeo quod vbi ius hypothecæ ext[illegible]ctum no[illegible] con-ditionem, adhuc reperiretur Ferminus ſine hypothec[illegible] quia illa tranſiuiſſet ad emptores etiam ſine ſpeciali c[illegible]ſſione, quia [illegible] ſupra dictum eſt iura realia tranſeunt in ſingularem ſucceſſorem licet expreſſe dictum non ſit, multo fortiu[illegible] ven-ditio ample facta eſt cum ceſſione iurium. ❡ [illegible] quod ceſſio aut remiſſio facta per [illegible] Magdalenæ [illegible] nocere Fermino non debet in iure off[illegible] quo [illegible] poſſit iure offerendi contra ipſam Magdal[illegible]m, quia reſpondetur quod Ferminus non poteſt præ[illegible], quod [illegible] miſſione aut priuatione iuris offer[illegible] facto [illegible] m, ſed illud amiſit ex facto ſuo propri[illegible] nãdo bona, p[illegible] alienatio-nem aut ſoluta fuit h[illegible] hypotheca ante [illegible] ores, & ſic illa ceſſio ſolum præiudi[illegible] prot[illegible] quibus ip[illegible] competebat ius offe[illegible] ſupra abunde probauimus. ❡ Non obſt. quod onus c[illegible] orum ceſſerit periculo & damno ipſius F[illegible] mini, ob [illegible] æquum videre-tur eum in al[illegible] releuari vt bona conſequi [illegible] per ius offeren-di, & in [illegible] ſectorum vt audio, videtur conſol[illegible] fundamentum par[illegible], ſed in ordetal[illegible] tam[illegible] tamque infirme ❡ Quia vt in præcede[illegible] m eſt, quando credito[illegible] obtinet [illegible] thec[illegible] non dici[illegible] quia non uo-cat [illegible] proprietas rei, ſed [illegible] poſſe[illegible] ſolum p[illegible] di-to [illegible] pigi[illegible] nec fuer[illegible] actum. *d. l. ſi cum venditor. ff. de euict.* ideo [illegible] emp[illegible] tus in hypothe[illegible] ſo-lum agit, vt [illegible] liberetur, aut [illegible] ſoluatur, & iſta liberatio ab on[illegible] hypot[illegible] emp[illegible] h[illegible] poth[illegible] [illegible] quia tene-tur [illegible] Ferminus vel-le [illegible] tem, [illegible] enim li-be[illegible] [illegible] tat dubi-[illegible] heca offe-re[illegible] in libe-ta[illegible] ceſſere

& remit[illegible] M[illegible] ſi [illegible] poſt [illegible] talem [illegible] remitter[illegible] Magd[illegible] [illegible] [illegible] non ex facto [illegible] bona [illegible] tendentis [illegible] *in alio* [illegible] ❡ [illegible] hypothe[illegible] [illegible] ne [illegible] ad [illegible] adeias [illegible] ❡ [illegible] facto ſuo [illegible], qu[illegible] cum [illegible] conuenire [illegible] que quo [illegible] emptori [illegible] ipſi bo[illegible] lius ceſ[illegible] Fermino [illegible] lenæ ſed [illegible] Fermini [illegible] bona tun[illegible], quia [illegible] non fierent. Enim [illegible] animum [illegible] primum vidit [illegible] eſſe bona [illegible] viduam Magdalenam prole om[illegible] fatigare [illegible] Magdalenæ ſ[illegible] non grauate [illegible] accepiſſe [illegible] e [illegible] cum m[illegible] iſtam ceſſionem & remi[illegible] non militare iudicarim [illegible] omnem rationem iuris, tum [illegible] te aduerſus ipſum Fe[illegible] ❡ [illegible] argu[illegible] ceſſ[illegible] & [illegible] emptores Magdalenæ Pi[illegible] Fermini, qu[illegible] ſupra [illegible] facta poſt h[illegible] Fermi[illegible] prote[illegible] quo [illegible] co[illegible] alt[illegible] empto[illegible] perie[illegible] ipſius F[illegible] dicatur omni [illegible] deus [illegible] vniem [illegible] ❡ [illegible] cludo ben[illegible] tentia[illegible] Saui[illegible] an. 10 Febr. 1547. [illegible]

SVMMARI[illegible].

1 *Vbi deficit cau[illegible] finalis contractus* [illegible] *nomina* [illegible]
2 [illegible] *empt*[illegible] *comp*[illegible]
[illegible] *reſtitutur*
4 *Res aliter iure datoria* [illegible]
5 *Poſſe*[illegible]
6 *Co*[illegible]
[illegible]
8 *Noterium* [illegible]

CO[illegible]SILIVM CCX[illegible]

Pro Antonio [illegible] *Catharina de* [illegible] *naſteriolo contra Catharina* [illegible]

DIVINE [illegible] Catharina de Miloc[illegible] pr[illegible] [illegible] nitatis di[illegible] loci & canonico [illegible] pacto [illegible] pror fac[illegible] & re[illegible] per [illegible] edes qu[illegible] nu[illegible] ſemp[illegible] do oritur quæſtio interveni[illegible]

me[illegible]etur poſſeſſi[illegible] tu[illegible]uo[illegible]ius condict[illegible] prendi de talin p[illegible] de [illegible] comperat cont[illegible] ſtrandum iuſtit[illegible] mpo[illegible] [illegible] deo po[illegible] debea[illegible] co[illegible] & [illegible] per[illegible] d[illegible] bet [illegible] *Idequa* [illegible] [illegible]bar [illegible] [illegible] pol[illegible]ſſi[illegible] ec perti[illegible] deb[illegible] [illegible] dnmi. N[illegible]iſt[illegible] [illegible] debet[illegible] tent[illegible] in [illegible] *incon 216* [illegible] [illegible] poſſ[illegible] [illegible] involut An[illegible] [illegible] *ſic dicatur* [illegible] *ff. & propter* & [illegible] biexce[illegible] petitorium non ad mitt[illegible] in p[illegible] mittitur. O dr[illegible] *De toto* [illegible]

7 ubi † quod domini[illegible] probandum. Idem [illegible] & nobuius [illegible] tus notorie [illegible] n[illegible]gen[illegible] loſio. inducit [illegible] *de verb.* [illegible] probat [illegible] *illam* [illegible] *tempor* [illegible] po[illegible] etiam [illegible] proprietatis *c. ab animaduer* [illegible] *conſtitutus.* de[illegible] *bit.* Ant. de Butr. *in ca.* [illegible] *l. naturaliter* §. *nihil commune* [illegible] *fallen* [illegible] *poſſeſſ.* Socin. *in conſi.* [illegible]

8 [illegible] *in fin.* ubi Dec. † quod n[illegible] [illegible] d[illegible]uo conſtat ex actis. ſ[illegible]uus dicit S[illegible] *loco. ſu.* quod notorie dicitur [illegible] [illegible]umento quod Soc. dictu[illegible] [illegible] tuntamenta nihil [illegible] Ita[illegible] notorie conſtet ex actis de re[illegible] menton in lecuto & defectu ca[illegible] dubio videtur pronum[illegible] [illegible] pars agens p[illegible] [illegible] per tali exception[illegible] ſu admiſſionem capitulorum [illegible] ab admiſſione, quia [illegible] [illegible] *ff. de a quir. po*[illegible] [illegible] *dierum* [illegible] Q[illegible] hic dicimus [illegible] ſed et [illegible] preſſe con[illegible] ad [illegible] quod [illegible] um [illegible] ver- [illegible] in pecta, q[illegible] obſtat exceptio domi[illegible] petitorium [illegible] probat[illegible] [illegible] § Sed [illegible] [illegible] ipſa [illegible] [illegible] [illegible] alien [illegible]

[illegible] ex p[illegible] [illegible] cedm[illegible] do ma[illegible] [illegible] S[illegible]

SUMMARIA.

1 [illegible]
2 [illegible]
3 [illegible]
4 [illegible]
5 [illegible]
6 [illegible]
7 [illegible]
8 [illegible]

CONSILIUM [illegible]

Pro nobili Iacobino Garnerio [illegible] *nobilem Lucretiam* [illegible] *nerii.*

DIVIN[illegible] [illegible]

tione vt not. Paul. & Iaſ. *in d. auth. qui rem C. [illegible]*
quant [illegible] ob dolum tam [illegible]
[illegible]ltando [illegible] ſubtrah[illegible] ipſa bona, [illegible] lon[illegible]
tem [illegible] tum, [illegible] e, quam dim[illegible] aut detet[illegible]re. Id-
eo ſi punitur vſufruc[illegible]arius in amiſſ[illegible]ne iuri ſui pro delicto
[illegible] *l. qui indignum. ff. de ſenator [illegible]*
rum. §. [illegible] de interdict. & releg. [illegible] vbi Barto. *Digeſt. de adulter.*
l. [illegible] ff. de [illegible] capit. illorum. de ſenten. excommun. ¶ Tertio
2 in h[illegible] generalis, quod [illegible] vſuf[illegible]ctua-
rius [illegible] ſuo quo[illegible] male verſat[illegible] rebus ne[illegible]
tu[illegible] arbitri[illegible] boni viri, vt habetur per Iaſon. *in leg. nemo*
poteſt. in vltimis verbis. in [illegible] & ſic [illegible] conſideratur
dolus. Itaque nun[illegible] quomodo dolus committatur mu-
do omni[illegible] ſit, quia non curamus de modo, dummodo ha-
beamus effe[illegible]um. *l. ſi. ff. mandat. l. mulier. ff. ad Treb. l. ſi mater. Co-*
dic. de inſtit. & ſubſtitut. capit. in his. de verb. ſig[illegible]. ¶ Quarto, nos ha-
bemus quod [illegible]tuarius nolit [illegible] cavendo & fruen-
do arb[illegible] boni vi[illegible] facit fructus [illegible], imo illos tenetur
reſtituere, quia non dicitur bona fide [illegible] percipere in præ-
ſtanda cautionem quan[illegible] Bartol. *in l. vſufructu.*
circa fin. C. de vſufruct. Bald. *in l. 2. C. eod. tit. [illegible]* per Dec. *in con-*
ſil. 607. colum. 2. poſt med. & in conſil. [illegible] ſed ita ratio malæ fidei
magis viget quando vſufructuarius occultat bona ne deſcri-
bantur quam quando recuſat cavere, quia recuſando cavere
ſolum delinquit in omittendo, ſed o[illegible]tationis deli[illegible]um
3 conſi[illegible] in faciendo. ¶ Gravius † aut[illegible] eſt delictum facientis
quam omitte[illegible]ntis. *gl. [illegible] ff. de ſolut. ma[illegible] l. [illegible] §. filius.* vbi Bart.
ff. de pænis l. 2. ff. ad S[illegible] cum ſimi[illegible]b. Ruſ[illegible] cautio præſtatur & re-
quiritur ad finem vt vſufructuarius bona [illegible] de ſtatim & arbitrio
boni viri, [illegible] do ſi amittit vſufructuarius ius ſuum non caven-
do, [illegible] requiſ[illegible] onem, & ſic non faciendo id quod ordinatur
ad finem [illegible] tendi & fruendi arbitrio boni viri, a fortiori debet
privari iure ſuo quando male verſatur circa ipſum finem, quia
finis eſt nobilior omni eo quod ordinatur ad ipſum finem. *l. &*
4 *ſi non ſint. §. perven. [illegible] ff. de auro & argen. leg.* ¶ Concludo † igitur in
hoc p[illegible] dubio eſſe locum amiſſioni vſusfructus ob occulta-
tion[illegible] bonorum, quando requiſita vſufructuaria de conſi-
gnando & deſcribendo bona mobilia omnia, recuſat profiteri,
ſed al[illegible] occulta tenet, quorum nomine poſtea convincitur,
& hoc dummodo [illegible] occultata ſint notabilis æſtimationis,
qui[illegible] in modicis ceſſaret ſuſpicio doli aut fraudis. *c. ſi quæſtiones.*
de ſimonia. & [illegible] Iaſ. *in d. auth. qui rem. colum. 3. C. de ſacroſanct. eccleſ.*
¶ Secundo dubitatur, teſtator de tempore mortis reliquit mul-
tos fructus iam perceptus, & domi reconditos, an illos lucre-
tur [illegible] fructuaria: Breviter concludo quod tales fructus
5 veniant in legato, quia † in legato vſusfructus veniunt etiam ea
quæ [illegible] conſumuntur. *l. 1. Cod. de vſufructu [illegible] omnium. 2. Digeſt.*
eod. tit. [illegible] ff. de vſufruct. legat. Alexand. *in conſil. 55. co-*
lum. 2. circa fin. verſ. [illegible] generali lib. [illegible] Ideo in talibus fru-
ctibus perceptis de [illegible] tempore mortis teſt[illegible], & ante aditam
here[illegible] habet v[illegible] fructuari[illegible] fructus, non tamen
tales fructus omnino [illegible], ſed pro eis tenetur cavere de
re[illegible] arbitrio boni viri [illegible], aut tandem e[illegible] æſtimatio-
nem prout in rebu[illegible] [illegible] nuntur. Ita Bald. *in conſil. 37.*
[illegible] lib. [illegible] conſil. 451. eodem libr. 5. tradit Corn.
[illegible] 87. colum. [illegible] ¶ Te[illegible] dubitatur, quia vxori reli-
ct[illegible] vſusfructu[illegible] donec caſte, [illegible] vidualiter vixerit, ſi vxor ſe-
cundo nubat an lucretur fructus perceptos ante ſecundum
[illegible] Breviter reſpondeo quod ſic, quia tot ſunt le-
gata quot ſunt anni & [illegible] legata conditionalia, ideo pro
annis præteritis pro quibus conditio impleta eſt lucrari debet
fructus. Ita [illegible] *cum filiæ §. qui Mutianam. Digeſt.*
de legat. 2. [illegible] ſub conditione. §. ſi paterfamilias.
[illegible] Digeſt. de legat. 1. & multo minus ſi viduita-
te [illegible], her[illegible] tenebitur fructus perceptos
in [illegible] vſufructuar[illegible] reſtituere. ¶ Nec obſtat præmiſſis quod
teſtator voluit [illegible] dumtaxat bona revertitur ad here-
dem, quia [illegible] bona, quia amplius non
[illegible] fructus, ſed non dicit teſtator quod eo caſu te-
ne[illegible] fructus antea perceptos durante vidui-
t[illegible] non liquerunt, [illegible] non præſumitur.
6 *leg. [illegible] Digeſt. de acquir. vel omit. heredit. [illegible]*
[illegible] ad defunctum. Cod. de caduc. tollend. & verba teſtatoris man-
dantis bona tene[illegible] intelligi ſecundum diſpoſitionem
iuris. *l. Gallus. §. quidam rec[illegible] ff. de liberis & poſthum. l. ſi duo. ff. de acquir.*

l. [illegible] Bart. [illegible] Doctor. *in l. heredes mei. §. cum ita. ff. ad Trebellian.* con-
ſequ[illegible] debent intelligi illa verba ſecundum quod ius diſ-
ponit, id eſt, quod poſt [illegible] nupti[illegible] amplius non percipi-
et vxor fructus non etiam quod ante perceptos teneatur reſti-
tuere. ¶ [illegible] dubitatur, paulo ante mortem teſtatoris, ipſe
te[illegible] tor & [illegible] venerant ad diviſionem domorum, ſed
qui[illegible] poſt mortem teſtatoris amplior erat, conventum fuit de ſolven-
do heredi [illegible] quadraginta, an vxor vſufructuaria
gr[illegible] ex fructibus teneatur ad illos
[illegible] 14[illegible]. Brev[illegible] heres poſſit agere contra
7 vſufructuariam, [illegible] quod non, quia † per aditionem he-
reditatis actione [illegible] *l. [illegible] Cod. de pact.* Aut quæri-
mus an Iacobinus he[illegible] ſibi retinere & reducere de bo-
nis in quibus vſusfructu[illegible] legatus eſt quod ipſi heredi debetur,
& ſimiliter dicendum videtur quod nonnullo facto inventa-
rio, quia legatum [illegible] non eſt vniverſale omnium bo-
norum, ſed particulare reſtrictum a[illegible] bona mobilia & immo-
bilia, ſed contra legatarios ſingulares aut particulares nulla ho-
die fit detractio aut deductio eius quod heredi debetur nullo
facto inventario, quia tenetur heres vltra vires hereditarias,
ideo confectione inventarii opus eſt ſi heres vult retinere debi-
tum ſibi, licet ſecus in fideicommiſſo vniverſali. Ita Paulus de
Caſt. & Alex. *in l. [illegible] tamen. §. ex Trebell. ff. ad Trebell.* Idem Paulus de
Caſtr. *in conſil. 19. Vltra ea quæ tanguntur in 2. & 3. dubio. in conſil [illegible]*
[illegible] narratione ſatis long. in conſil. 186. Dubium [illegible] in omnibus prædi-
ctis & in conſil. 188. quia dubia colum. 2. poſt med. lib. 2. Alexand. *in conſil.*
124. in fin. lib. 6. Soc. *in conſ. 44. lib. 3.* ¶ Sed dubium eſt ſi heres faciat
inventarium an poſſit deducere illos ſcutos 140. ex præmiſſis
videretur quod ſic. Sed caſu iſto puto contrarium, quia præ-
miſſa procedunt quando ſine deductione heres defraudaretur
credito ſuo, ſecus ſi habeat adhuc alia bona hereditaria ex qui-
bus ſibi ſatisfactum dicatur, † non enim diminui debent legata 8
ob æs alienum heredis quando remanent bona ad illud ſuffi-
cientia & etiam ad Falcidiam. Sed in caſu noſtro apud here-
dem remanet proprietas bonorum quæ ipſa valet longe vltra
illos ſcutos 140. Imo remanet etiam apud heredem area vna
cum ſuis pertinentiis pleno iure tam reſpectu vſusfructus quã
proprietatis, remanent etiam nomina debitorum vt infra dice-
mus in 5. dubio. ¶ Ex quibus concludo in hoc 4. dubio non eſ-
ſe locum actioni neq; deductioni aut retentioni ob cauſam di-
ctorum ſcutorum 140. ¶ Quinto dubitatur, an vxor debeat
habere vſumfructum aut vſum in nominibus debitorum? Bre-
viter puto quod non, quia relictus fuit vſusfructus bonorum
mobilium & immobilium, quorum appellatione non veniunt
nomina debitorum, quæ dicuntur tertia ſpecies. *l. quam Tubero-*
nis. §. penult. §. de pecul. l. a divo Pio. §. in venditione. vbi Iaſ. *in 4. not. ff. de re*
iudic. Alex. *in conſil. 9. in fin. in conſ. 45. col. 4. in conſil. 51. colum. 2. circa med.*
lib. 1. & alibi ſæpe. Et in terminis noſtris quando relinquitur vſuſ-
fructus bonorum mobilium & immobilium quid veniat vſus
nominum debitorum, voluit [illegible] *in conſil. 50.* Gilius Petr. ſequi-
tur Iaſ. *in d. l. a divo Pio. §. in venditione.* addo Bald. *in conſ. 413. Andreas.*
lib. 3. Saviliani die penult. Februarii, 1547. Aymo Cravetta ex
Saviliano. I.V.D. Sub correctione.

SVMMARIA.

1 *Donatio quando vere dicatur ob cau[illegible].*
2 *Verba proximi denotant cauſam [illegible].*
3 *Vbi eſſ[illegible] repugnat verbis, mag[illegible] attenditur effectus quam ſonus verbo-*
rum. [illegible] denominatio [illegible] ab effectu potius quam à verbis.
4 *In dubio fieri debet interpretatio per quam ſatis ſit vtriq; caſui quando in-*
ter aliquot caſus diverſitas reperitur.
5 *Verba in dubio cenſentur prolata demonſtrative non reſtrictive.*
6 *Diſponens cenſetur velle providere in cauſa magis neceſſaria.*

CONSILIVM CCCI.

Pro nobilibus Ioanne Laurentio, Ioann. Bartholomæo de Grionis fratribus ac nobili Ioan. Garrone ex loco Brayda contra nobilem Chriſtophorum Fizorii.

DIVINO ſubſidio ex corde poſtulato. De anno 1543. & die 20. Maii, reverendus dominus, Petrus Fizotius, prior eccleſiæ S. Andreæ, loci Braydæ dicens ſe alienaſſe quam pluſima bona nob. Chriſtophori Fizotii cum voluntate tamen ipſius Chriſtophori & promiſſione de ipſum remunerando & recompenſando, & vlterius conſideratis quam plurimus beneficiis, ſervitiis & obſequiis acceptis ab ipſo Chriſtophoro ad ſu-

giendum ingratitudinem animi mei [illegible] & [illegible] & ob immenſum amorem [illegible] lib. [illegible] placuit libe[illegible] ra liberalitate dedit, &c. ¶ [illegible] cat u facta animo [illegible] donatorem [illegible] ¶ Pro[illegible] quod non [illegible] timò, [illegible] mera liberalitate, ſed non [illegible] nato animo compenſ[illegible] legatum non d[illegible] compen[illegible] donatum aut legatum. ita Alex. [illegible] *in conſ.* [illegible] *fol. 7 colum. penult. in vlt. dub. lib. 6.* ¶ Se[illegible]ndo alleg[illegible] parte do[illegible] poſito quod diceretur [illegible] donatio [illegible] compen-ſandi, talis tamen compenſatio reſtringeretur ad p[illegible] e-natione voluntate ipſius donatarii propter verba d[illegible], & ad prædia quorum alienationi donatarius con[illegible] non etiam extenderetur ad alia prædia quorum alienationi dona-tarius non conſenſit, quia [illegible] vnius incluſio, alterius eſt excluſio. *l. cum prætor. ff. de iudic. cum ſimilib.* ¶ Sed præmiſſis non obſtantibus contrarium puto de iure verius, quod imo talis donatio [illegible] ca-tur donatio remuneratoria [illegible] facta ob cauſam [illegible] compenſandi.

1 ¶ Primo, † quia fuit deuentum ad beneme[illegible] rerum expreſſio-nem in ſpecie ſeu ad expreſſionem cauſæ in ſpecie, propterea di-citur donatio ob cauſam non obſtantibus [illegible] verbis purè, li-bere ſimpliciter & liberaliter Oldrad. *in conſilio* [illegible] *in fin.* ſequitur Alexand. *in conſilio 40. in 3. dubio. libro 4.* So[illegible] *in conſil. 54. colum. 1. lib.* [illegible] Decius *in l. ſi donationis. colum.* [illegible] *medenum.* [illegible] *colla-tio.* & licet loquantur Doct. quod cauſa in ſpe[illegible] reſpi-cit commodum donantis, tamen cauſa hic expre[illegible] reſpi-cit commodum donantis vt [illegible]beretur donator ab [illegible] & pro-miſſione remunerandi, quod ſe facturum pro[illegible] ſimiliter reſpiciebat commodum quod donatarius [illegible] aliena-tionibus factis de bonis ipſius donatarii, quæ per [illegible] eius conſen-ſum non poteſt alienans aut habentes cauſam ab eo moleſtari. ¶ Secundo principaliter dicitur donatio illa facta animo com-penſandi propter verba expreſſa in proœmio ipſius donatio-nis, in quo narratur de iſtis alienationibus factis [illegible] bonis do-natarii, & quod donator promiſerat ipſum donatarium [illegible] cō-penſare, ex quo proœmio oſtenditur cauſa finalis ipſius dona-tionis quod motus fuerit donator ad donandum principaliter

2 [illegible] compenſaret, † quia verba proœmii [illegible] cauſam finalem. [illegible] *fin.* vbi Bartol. & Bald. *ff. de hered. inſtit. gloſſ. in l.* [illegible] Bald. *in l. pacta conuentione. C. de pa. tu.* ¶ Rurſus ex proœmio declaratur voluntas diſponentis. *l. item quæ. Dig. de* [illegible] ergo [illegible] patet quod cauſa donandi finalis fuit propter com[illegible], & quod in donante omninò fuerit voluntas recompenſandi, ſed vbi apparet de voluntate donatoris quod voluit donare animo compenſandi, ſine dubio [illegible] talis [illegible] *l. creditor. in ff. de leg. l.* [illegible] *compenſandi. Cod. de her. inſtit.* Alex. [illegible] *l. 19. in* [illegible] *cum ſimil.* & iſta voluntas hic ap[illegible] et per verba expre[illegible], quia teſtator donauit propter [illegible] remunerandi [illegible] com-penſandi quod ſe facturum promiſerat. ¶ Tertiò iſtam quæ-ſtionem videtur in terminis magis dubitabil[illegible] decidere [illegible] *in conſil. 115. libro 4.* vbi Corn. quod teſtator cenſetur legaſſe animo compenſandi quando in præfatione legati dixit ſe illud facere ad obuiandum diſcordiis & moleſtiis inter legatarium & here-dem, quanto fortius dicendum eſt donationem iſtam cenſeri factam animo compenſandi in qua donator in eius præfatione aſſerit quod alienauit bona quamplurima donatarii, & quod eum recompenſare promiſit, & ſic in caſu iſto donator in ſpecie exprimit cauſam recompenſandi nec ita generaliter loquitur prout in caſu Cornei. ¶ Quartò niſi dicamus compenſationem factam eſſe per verba illa ſpecialia poſita in proœmio donatio-nis, illa ſuperabunturac de nihilo deſeruirent, ſed non eſt di-cendum voluiſſe donatorem ad talem expreſſionem deſcen-dere ſine aliquo effectu & m[illegible] iſterio. *l. ſi quando §. 1. leg.* [illegible] *depræd. lib. 6. cum ſimil.* quæ hic cumulare non [illegible] ¶ Et quo-bus p[illegible] hanc partem abunde ſatis firmatam [illegible] re-ſpond[illegible] contraria, ad [illegible] expreſſi[illegible] p-patet. ¶ Sed tamen ad m[illegible] de[illegible] om ſpecie, [illegible] ad primum quod non [illegible] animo cōpe[illegible]

3 de[illegible] od [illegible] repu[illegible] ne-ctus q[illegible] orum [illegible] abeſſe [illegible] *prim. & gloſſ.* [illegible] de

p[illegible] *donatur ff. de* [illegible] ob [illegible] cundo [illegible] tractus dicatio[illegible] tenti donatio e[illegible] lis donatio no[illegible] tu a. Bart. *in l. ſi* [illegible] *pe.* [illegible] *in d. l. ſi donationem* [illegible] *de* [illegible] naliter quatenus [illegible] tur pr[illegible] donatio, [illegible] *lum ff. de donat.* S[illegible] *in conſ.* [illegible] *lib. 4.* [illegible] donatio reſpectu [illegible] ſatis [illegible] centeri, quia quatenus adeſt [illegible] nus cauſa ceſſat, dicitur [illegible] tenus ceſſat cauſa recōpen[illegible] & qu[illegible] valent quam bona alienat[illegible] procedens ex mera libe[illegible] & conuenit rationibus [illegible] quia † [illegible] tatio per quā ſtatim [illegible] caſu quand[illegible] uerſitas reperitur. *l. adoptiua* §. 1. *in f.* [illegible] *rum.* Bald. *in l. bonorū* [illegible] C. [illegible] *cauſa quam magna* [illegible] tione ſatis fit vtriq; cum [illegible] penſandi quatenus illa [illegible] ex mera liberalitate quatenus bona donata [illegible] enata p donatorem ¶ Non obſtat ſecundum [illegible] talis compenſatio debet reſtringi ad bona [illegible] te & conſenſu ipſius donatarii, quia reſpon[illegible] primò quod illa verba de voluntate, & [illegible] non p[illegible] tiue aut reſtri[illegible] ue, ſeu enunciatiue & demonſtrat[illegible] nator voluit den[illegible] non alienaſſe inuito [illegible] volente, ad demonſtrand[illegible] beneficia ipſius donatarii [illegible] miſit bona ſua alienari pro tribuendo ipſi don[illegible] neficia voluit alienans per illam donationem rec[illegible] in dubio enim † [illegible] ba cenſentur prolata demonſ[illegible] ſtrictiue *l. ſin. §. 1 tta ff. de liber. leg.* Bart. *in l. cum pater* [illegible] *quod ſi teſtator ff. de leg. 2.* [illegible] *l. Centurio col.* [illegible] *quod ſi* [illegible] *ff. de* [illegible] Paul. de Caſt. *in conſ. 119.* [illegible] *miſſa col.* [illegible] *poſt med. lib. 2.* cum enim aſſeruit donator [illegible] recom-penſare beneficia & dixerit alienaſſe quamplurima bona [illegible] natarii de eius voluntate, iſta verba de eius voluntate cenſen-tur appoſita ad probandum ipſa beneficia vt talia [illegible] qua [illegible] prædicata demonſtrant. *l. 3.* vbi Bart. *ff. de fund. inſtr.* [illegible] *l. qui vnicum. ff. de* [illegible] *leg. l.* [illegible] *inter dilectos. verſ. cæterum* [illegible] Bal[illegible] *donata* [illegible] Paul. de Caſt. *in conſ.* [illegible] ¶ [illegible] cundo reſponde[illegible] verita[illegible] tate, &c. poſita eſt [illegible] tamen dico quod d[illegible] ſeruit ſe alienaſſe quamplurima bona cum volun[illegible] ipſius donatarii, illo dictio tamen, eſt limitatiua præc[illegible] *Lucius Titius ff. ad Trebell.* & reſtringit dictio tamen [illegible] præcedentia. Bald. *in conſ.* [illegible] *col. pen.* [illegible] *natura* [illegible] *lib. 2.* & [illegible] teſtator [illegible] voluntate ipſi[illegible] cum [illegible] voluntatis [illegible] etcauſa & [illegible] penſandi ¶ Ne[illegible] quod o[illegible] fortè non exp[illegible] de volunta[illegible] & conſ[illegible] ſu ipſiu[illegible] quia non [illegible] donatarius no[illegible] mentorum, [illegible] tuit habere [illegible] poſt. & cum d[illegible] de vo[illegible] omnibus al[illegible] donatari[illegible] tionis, non poteſt [illegible]

perſona.ff. de reg. iuris. & quia prodocens inſtrum ntum cen etur fa oinn in eo contenta vera eſſe. *cum olim.de cen c.cum venerabilis.* v reScriben. *de except.* ¶Præterea,p it n n on ceſſ ,quod donatarius non conſenſiſſet omnibus alie tionibus,tamen dhuc fi debet facta donatio animo compenſandi cum omnibus alienatis,quia ſi donator voluit recompenſare don tarium pro alienatis de eius voluntare, à fortiori pro a n tra eius voluntatem,quia maior ratio & maior neceſſitas compenſandi erat circa alienata ſine conſenſu donatarii qua rca alia, quia niſi facta eſſet recompenſatio pro alienat n onſenſu donatarii, potuiſſet donatarius vendicare bona ab emptoribus,& emptores habuiſſent regreſſum de uictione contra ipſum donatorem eorum authorē aut eius heredes, non ita fieri poterat in alienatis de voluntate donatarii: erg dicendum eſt quod donator voluerit re ompenſare donatarium in il enam bonis in quibus militabat maior neceſ-
6 ſitas recompenſandi, quia † cenſetur diſponens velle prouidere in ca magis neceſſario. Bald. *in conſ.35. Pater filio col.2.lib.2.& in* *to : Proponitur quod quid. u col.1. poſt med. verſ. contrarium eſt modo. lib.* ¶Poſtremo quando dubitatur an aliquid includatur in diſpoſitione, optimus interpres ad iudicandum eſt valor rei, ex quantitate enim precii præſumitur quid & quantum veniat in contractu *glo.no.in l.ſemper in ſtipulationibus.in glo. magna.circa med. ff. de reg. iur.* Alex. *in conſ.16.lib.4.* modo conſidero quod bona donati non ſolum ſufficiunt pro recompenſatione omnium alienatorum, ſed etiam valorem alienatorum excedunt in magna quantitate, itaque dicendum eſt, quod voluerit donator recōpenſationem fieri quoad omnia, & poſtquam fecit donator mentionem de recompenſatione generaliter illam non reſtringendo, generaliter intelligi debet facta recompenſatio. *l. de pretio.ff. d. ꝓ ibl cum ſimil.* maxime, quia (vt dictum eſt) maior eſt ratio & neceſſitas recompenſandi bonis alienatis ſine conſenſu donatarii, vbi non in omnibus conſenſiſſet, ſed fruſtra de hoc diſputatur poſtquam aſſeruit & teſtificatus eſt donator quod omnia alienauit cum voluntate ipſius donatarii ¶Ex quib. concludo c ntentum eſſe oportere donatarium bonis donatis, nec poſſe petere nomine alienatorum: & ita de iure & æ ondeo, ſaluo ſaniori iudicio. Sauliani 4. Martii 1547. Aymo Crauetta ex Sauliano I.V.D.

Svmmaria.

1. *Spoliatus de poſſeſſione ſine ordine & probatione reſtitui debet.*
2. *ando ſpoliatus non reſtituatur.*
3. *Quia differentia inter ſpoliatum à priuato, & ſpoliatum authoritate iudicis.*
4. *Iudex dicitur priuatus quando procedit ſine cauſa cognitione.*
5. *Executio facta virtute ordinationis inualida dicitur nulla.*
6. *Spoliatus non reſtituitur quando notorie conſtat de non iure ſpolii.*

CONSILIVM CCCII.

Pro Maria relicta quondam Thoma Gingoli ex Sauliano contra Franciſcum Varini ab eodem loco.

DIVINO ſubſidio ex corde poſtulato. In hac cauſa Mariæ Gingolæ contra Franciſcum Varini, de duobus quæritur. Primo, an dicto Franciſco Varini competat poſſeſſorium recuperandæ. ¶Secundo, an ſi competat, obſtet exceptio proprie-
2 tatis ¶† Circa primum dubium puto breuiter concludendum competere remedium poſſeſſorium, licet ſpoliatus fuerit agens aut a ite iudicis, ex quo iudex proceſſit non ſeruato iuris ordi , imo ordinario de mittendo dominum directum in poſſeſſionem, lata eſt parte non vocata, conſtat autem competere remedium poſſeſſorium ad recuperandam poſſeſſionem licet à iu ice ſpoliatus quis fuerit, quando proceſſit iudex non ſeruato iuris ordine *c.cauſam matrimonii. & c. tum cauſam.* vbi Abb. *in 4.no.de off.deleg.c. ex inſinuatione.de procu.c.conquerente.de reſtitu.ſpol. c.referente.* Dec *in 2.not.d. praben.l.meminerint.C.* vnde *vi gl.3.q.1.in ſumma* Bald. *in conſ.134. Cap. lib.3.* vbi quod ſpoliatus ſine ordine & probatione reſtitui debet. tradit idem Bal. *in conſ.147. Spoliatus lib.3.* Ant. de Bur. *in conſ.12.in 2.quæſt.& in conſ.18. col.10. verſ. nec obſtat quod Cinum lib.1.* Amplius datur reſtitutio poſſeſſionis non ſolum quando procedit iudex contra citatum, ſed etiam ſi cō tatum, ad ocum tamen non tutum Bal. *in conſ.327.Innuſtiſſima.lib.1.* Idem ſi iudex procederet, ſeruato iuris ordine, ſi tamen non eſſet iudex competens, nam ſine dubio competeret remedium poſſeſſorium. Anch. *in conſ.248. Ad prædicta dubia. in 1. dubio.* Soc *in conſ.12.col.4. verſ. facit etiam ad prædicta.lib.1.* Dec. *in conſ.125.* Quod procedit quando iudex nulliter procederet per errorem iuris, ſecus ſi per rrorem facti ductus aliquo probabili errore facti, quia tunc non competeret remedium poſſeſſorium, ſed alter agendum eſſet officio iudicis aut via nullitatis. Abb. *in d.c. ex inſinuatione in 4. not. de procur.* ſequitur Dec. *in d. conſ.125. col.3. in fin.* ¶Similiter procedit præmiſſa quando ſententia iudicis ſpoliatiua alterius eſſet nulla, ſecus ſi valida † mero iure licet 2 iniuſta, quia tunc ſp authoritate talis ſententiæ non reſtituitur. Abb. *in d.c. cum ex. de off. deleg.* Feli. *in d.c. dilectus.col.1. poſt med. in 3. fallen. de reſcrip.* ¶ tamen non procederet quando iniuſtitia ſententiæ qu æquiparatur nullitati: ideo compe dium poſſeſſorium vt per Feli. *in d.c. dilectus de reſcr.* ¶ ecundum dubium, an contra agentem poſſe exceptio proprietatis concernens petitorium. videretur dicendum quod non. *per gl. 3.q.1.in ſumma* vbi quod contra ſpoliatum à iudice ordine iuris non ſeruato, non admittitur exceptio criminis aut minus canonicæ inſtitutionis: ſequitur Socin. *in d. con.12. in 1.q.lib.1.* vbi Socin loquitur quando proceſſit iudex parte non citata. Idem etiam & magis generaliter voluit Bal. *in d. conſ. 4 . Spoliatus lib.3.* vbi quod contra ſpoliatum per ſententiam nullam non admittitur exceptio concernens iuſtitiam poſſeſſionis. Idem tenet Hoſti. *in tit. de reſtitutio. ſpolia. §. quando facienda in princ.* vbi quod ſpoliatus nō ſeruato iuris ordine in continenti reſtituitur, ſi vero ſpolietur ſeruato iuris ordine non reſtituitur ante cauſæ cognitionem, an iuſte fuerit ſpoliatus vel non, ſequitur Feli. *in d.c. dilectus de reſcr.* ſed hic iudex proceſſit non ſeruato iuris ordine & parte nō vocata, ergo &c. ¶Sed præmiſſis non obſtantibus contrarium puto de iure verius, quod imo admitti debeat exceptio concernēs petitorium. & pro fundamento conſidero quod doct. faciunt differentiam † inter ſpoliatum à priuato & ſpoliatum authori- 3 tate iudicis. quia ſpoliatus à priuato in continenti reſtituitur, ſed ſpoliatus authoritate iudicis non reſtituitur niſi cauſa cognita an iuſte fuerit ſpoliatus vel non, propter præſumptionem quam iudex pro ſe habet. Old. *in conſ.124. Iſta ſunt allegationes. col.5. verſ. in contrarium.* Gemin. *in conſ.146. Dominus Burgen ii col.1.* Calc. *in conſ.126 col.2. ante med.* Deci. *in conſ.449. col. pen. poſt med.* Iaſ. *in l. . §. fi. ff. de acq. poſſ. & in conſ.58. col.3. in fin. lib.3.* ¶Hoc ita præſuppoſito neceſſe eſt dicere quod iſtud procedat quando ſententia iudicis per quam quis ſpoliatur, eſt nulla, quia ſi eſſet valida licet iniuſta, non competit remedium poſſeſſorium, conſequenter fruſtra tunc diſputatur an contra petentem reſtitutionem opponi
5 poſſit exceptio ¶Sed dicet aliquis, quid reſpondes ad contraria? Ego pro declaratione & intelligentia illius difficultatis puto diſtinguendum, quod iudex procedit omnino vt priuatus & extraiudicialiter, vtpote parte non vocata, & tunc idem iudicetur de eo ſpoliante vt de priuato ex quo vt priuatus omnino procedit, & ſic iſto caſu non obſtat exceptio. & idem ſi
6 partem quidem vocaret, ſed eam non audiret in ſuis defenſionibus & exceptionibus. & iſto caſu procedat dictum Cardin. *in clem.1. § fin. in fi. de celebra. miſſa.* vbi † quod iudex dicitur procede- 4 re vt priuatus quando procedit ſine cauſæ cognitione, quod dictum refert & ſequitur Feli. *in d.c. dilectus de reſcript.* Decius *in l. factum à iudice. ff. de reg. iur.* non enim dicitur procedere iudex ſine cauſæ cognitione quando citat partes. *§. fi. inſtit. de pœna temere litigan. l. in cauſæ. § cognita ff. de mino. l.3. § cauſa cognita.* vbi gloſſ. & Bart. *ff. de bon. poſſ. c. fi. de ſupplen. negl. præla.* & quod allegat non poſſit cauſæ cognitionem non interueniſſe vbi citatio adhibita eſt, tradit Gemin. *in conſ.121. poſt prin. per text. in c. antra quatuor. de maior. & obed.* Poſſet etiam dici procedere iudicem vt priuatum quando eſſet iudex incompetens, quo caſu etiam datur reſtitutio. Anc. *in d. conſ.148. in 1. dubio.* Soc. *in d. con.12. col.4. verſ. facit etiā ad prædicta. lib.1* Dec. *in d. conſ.125.* ſimiliter diceretur iudex procedere vt priuatus quando eſſet iudex delegatus qui procederet non ſeruata forma ſuæ commiſſionis, quia non dicitur iudex in eo in quo excedit formam ſui mandati. Old. *in conſ.127. De toto themate. colum.1. in fin.* Aut procedit iudex parte vocata ſed omittit aliquas alias ſolennitates iudicii ex quibus ſententia redditur nulla, puta alias ſolennitates iudicii aut aliam, & iſto caſu procedit opin. quod ſpoliatus authoritate iudicis non reſtituitur niſi cauſa cognita an iuſte, vel iniuſte fuerit ſpoliatus. Ratio eſt, quia licet ſententia dicatur nulla ex omiſſione alicuius ordinis aut ſolennitatis, tamen iudex non dicitur proceſſiſſe vt priuatus & extraiudicialiter, ex quo partem vocauit, niſi par-

[illegible] tam & comparentem audire noluiſſet, & [illegible] itadicamus & diſtinguamus, neſcio videre quomodo procedat differentia [illegible] inter ſpoliationem iudicis & priuati. in qua differentia [illegible] attribuere ſpoliationem iudicis quam priuati in propoſito [illegible] cum proceſſerit iudex ad executionem parte [illegible] ta, non poteſt dici quod proceſſerit vt priuatus & extraiudicialiter. ¶ [illegible] obſtat quod non fuerit citata pars [illegible] onde [illegible] in poſſeſſionem, quia fateor, & ob id [illegible] tali ordin [illegible] nulla, ſed dico quod ex quo fuit [illegible] ad actum executionis & miſſionis in poſſeſſionem [illegible] ſpoliationis, quod talis ſpoliatio non poteſt dici facta extra [illegible] aliter & vt à priuato, quia ſi comparuiſſet pars [illegible] executionis & defenſionis aut exceptiones validas propoſuiſſet, veriſimiliter fuiſſet audita, maxime cum illa ordinatio de mittendo nulla, tranſire non potuiſſet in rem iud. [illegible] tam: ſpoliatio enim immediate facta eſt per miſſionem in poſſeſſionem, non per ordinationem de mittendo. ¶ Actus autem immediatus debet attendi non mediatus. *l. ſocium qui in eo. ff. pro ſo. [illegible] ff. de cond. ob turpem cau. l. cum de hoc. ff. de excep. rei iud. l. ſi mulier. ff. [illegible] gl. in l. in glo. 3 ff. de edendo.* Bart. *in l. ſed ſi plures. § in arrogato ff. de vulg. & pup. ſubſt.* ſatis igitur videtur adhibita eſſe citationem ad actum ſpoliationis immediatum quoad hoc ne videatur iudex ſpoliaſſe tanquam priuatus omnino & extraiudi-

5 cialiter. † [illegible] licet executio facta vertute ordinationis inualidæ dicatur nulla, tanquam proueniens ex radice infect. *l. ſi. C. de nat. lib.* tamen dici non poteſt, quod proceſſerit iudex ad talem executionem tanquam priuatus poſtquam partem citauit. ¶ Sed poſito & non conceſſo, exceptio concernens petitorium admitti non deberet in tali ſpoliatione facta à iudice, quia iudex proceſſiſſet omnino vt priuatus & extraiudicialiter: tamen dico quod [illegible] quo talis exceptio fuit admiſſa & ſuper ea receptæ probationes, debet iudex ſuper petitorio de quo cognouit pronunciare *l. [illegible] ff. de iud.* & in terminis exceptionis petitorii aut proprietatis contra poſſeſſorium quod ſuper ea debeat pronunciari [illegible] ſuper ea fuerunt probationes receptæ, eſt tex. *in cap. [illegible]* tradit Innoc. *in c. conſtitutus. de filiis presbyter. cum ſim.* [illegible] per A[illegible] *in l. naturaliter. § nihil commune. 16. in decima [illegible] ff. de acquir. [illegible] in l. [illegible] colum. 2. poſt med. de ope. no. nun. & in l. patre furi[illegible] col. 5. verſ. 15. facit. ff. de his qui [illegible]* Ratio huius eſt, quia factis probationibus ſuper proprietat[illegible] dicitur notorie conſtare de non iure ſpoliat[illegible] quæ inducant notorium. *c. [illegible]* Abb. *de verb. ſignif.* Innoc. & Doct. *in

6 tex. in [illegible] de appellatio.* ¶ † Sed ſpoliatus non reſtituitur quando notorie conſtat de non iure ipſius. Innoc. *in [illegible] c. conſtitutus. de filiis presbiter.* Alexand. *in d. § nihil commune. in decima [illegible]* Soc. *in conſ. [illegible] 7. col. fi. lib. 3.* Dec. *in conſ. 191. col. 4. in fi. verſ. 4. [illegible]* Oldr. *in conſ. 224. Iſtæ ſunt allegationes. col. 5. verſ. [illegible] & [illegible] colum. fin. verſ. nec obſtat, quod de poſſeſſorio ducebatur.* Ideo dominium probatum ex actis obſtat agenti poſſeſſorio licet non dominium probandum, quia vbi eſt probatum, notorie conſtat de non iure ſpoliati. Oldrad. *in conſ. 227. De toto [illegible] colum. 1. verſ. 2. obiicit. & in conſ. 274. In cauſa quæ vertitur ſuper diœceſano. colum. 1.* hinc videmus quod [illegible] gula iuris, quod ſpoliatus etiam prædo ante omnia reſtitui debet, non procedit quando ex actis conſtat ipſum eſſe prædonem, quia tunc notorie conſtat de non iure ipſius. Innoc. & Alb. *in cap. cum eccleſia [illegible] de cau. poſſ. & propr.* [illegible] quitur Rubeus Alexand. *in conſ. 107. volum. 4.* In propoſito noſtro cum admiſſa fuerit exceptio proprietatis & ſuper ea factæ probationes per teſtes & inſtrumentum albergamenti, dico quod ſuper tali exceptione debet iudex pronunciare *d. l. [illegible]* quia factis probationibus notorie conſtat de non iure agentis poſſeſſorio. Imo notorie dici [illegible] conſtare de non iure agentis [illegible] ſolo inſtrumento albergamenti. Soc. *in d. conſ. 87. col. [illegible]* ex quo Socin. dicto infertur quod admitti debet exceptio proprietatis, quando eius probatio impletur per ſolam productionem inſtrumenti. ¶ Quod ipſum tamen [illegible] procedere, quando contra tale inſtrumentum valid[illegible] opponeretur, ſed [illegible] contra inſtrumentum nihil [illegible] oppoſitum, neque [illegible] ponitur imo pars illi inhæret, ſed tantum in [illegible] ſuper poſſeſſorio. ¶ Amplius dico quod admiſſa exceptione proprietatis & ſuper ea [illegible] probationibus, ex quibus cauſa ipſius proprietat[illegible] iudicata ſit, quod non debet iudex pronunciare ſuper poſſeſſorio ſed ſuper petitorio [illegible] quod abſorbet cauſam poſſeſſorii. Ita in terminis tradit Anchar. *in conſ. 45. In prædicta quæſtione reperio. col. 2. poſt med. ver. [illegible] per tex. not. in c. paſtoralis. de cau. poſſ. & propr.*

Idem voluit Ol[illegible] *in conſ.* [illegible] vbi [illegible] manifeſte [illegible] po[illegible] tio. ¶ Sed dicet [illegible] qu[illegible] batur conſenſiſſe [illegible] expreſſe [illegible] dixit. Reſpondeo qu[illegible] non ſufficit [illegible] contradictio. [illegible] quirit appellatio, debebat [illegible] appellare quando vidit exceptionem proprietatis admiſſam, [illegible] appellando cenſetur [illegible] conſenſiſſe. Ita [illegible] tradit Aretin. *in d. l. naturaliter § nihil commune col. 7. ff. de acq. poſſ.* refert & ſequitur Felin. *in c. inter monaſterium. col. 4. poſt med. [illegible] neceſſaria [illegible] iud.* quicquid aliter [illegible] ter [illegible] Decius *in conſ. 84. col. 2. verſ. 3. & ult.* vbi [illegible] de [illegible] & Felin. mentionem non facit. Similiter [illegible] locutus Alex. *in conſ. [illegible] 5. verſ. nec obſtat ſi dicatur lib. 5* [illegible] dico quod licet exceptio proprietatis admiſſa [illegible] eſſet [illegible] admiſſioni contradiceret parata appellare adhuc [illegible]

6 beret, quia regula quod ſpoliatus reſtitui ante omnia debet procedit quando poteſt quis ingredi poſſeſſionem propria authoritate, & illam apprehendit ſine vitio, quia ſic apprehendens non cogitur poſſeſſionem reſtituere. Veronenſis *in conſ. [illegible] miſſa [illegible] col. pen. in 1. dubio* ſequitur Dec. *in d. conſ. 191. col. penult. verſ. 7.* quod ſupradictum eſt confirmatur, ſed dominus directus finita emphyteuſi poteſt emphyteutam propria authoritate expellere vbi non inuenit reſiſtentiam, & quando non [illegible] tur reum eſſe emphyteuticam, vt habetur pe. Scrib. *in l. 2. de emphyt.* tradit Socin. *in conſ. 167. col. 5. lib. 2.* Corn. *in con. 195 [illegible] in 271. lib. 3* ſed in caſu noſtro pars fatetur bona eſſe emphyt[illegible] & per inſtrumentum albergamenti conſtat emphy[illegible] tam quoad portionem Marchioti. Similiter per teſtes agen[illegible] conſtat quod Bernardus Varin donauit aliqua bona patri [illegible] tis nec conſtat de conſenſu domini, potuit igitur dominus directus apprehendere poſſeſſionem bonorum propria authoritate ſine licentia iudicis, ergo non tenet[illegible] poſſeſſionem reſtituere, & quidem multominus tenetur, quia poſſeſſionem apprehendit authore prætore, quam iure proprio poterat accipere, & quia ipſam poſſeſſionem accepit ſine vitio cum neminem inuenerit reſiſtentem nec verbis nec facto, quo caſu ſuccedit dictum Soc. *in d. conſ. 87. colum. fin. poſt med. verſ. 3. & ult. lib. 3.* vt quando poſſeſſio ad aliquem iuſte peruenit & ſine vitio, non tenetur poſſidens illam reſtituere, ſed hic poſſeſſio iuſte peruenit ad dominum directum emphyteuſi finita, peruenit etiam ſine vitio nemine reſiſtente. ergo, &c. ¶ Secundo principaliter conſidero quod agens propoſuit poſſeſſorium recuperandæ pro omnibus bonis, ſed remedium non videtur competere reſpectu portionis Marchioti defuncti, quia non probatur quod mortuo Marchioto apprehenderit poſſeſſionem reſpectu portionis ipſius Marchioti, imo conſtat de contrario, quia mortuo Marchioto continuo dominus directus poſſeſſionem accepit portionis ad Marchiotum pertinentis, nec poteſt agens dicere quod poſſeſſio Marchioti fratris continuetur in heredem *l. [illegible] heredes. ff. de acq. poſſ.* quomodo igitur poteſt agens reſtitui ad poſſeſſionem quam nunquam habuit. ¶ Itaque non poteſt obtinere in poſſeſſorio quod nunquam habuit, & vbi ha[illegible] ſet obſtat exceptio proprietatis in qua per inſtrumentum albergamenti & emphyteuſis apparet quod in emphyteuſi de agitur, non eſt locus iuri [illegible] ſed quod portio Ma[illegible] ti Varini defuncti ſine liberis reuerſa eſt ad dominum directum. Laus Deo Virgini ac diuo Ioanni Euangeliſtæ [illegible] curiæ cœleſti. Amen. Sauiliani 10. Martii 1547. Aymo C[illegible] ac. Sauiliano. I. V. D.

SVMMARIA.

1 *An miles Hieroſolymitanus ſuccedat in feudo.*
2 *In feudo nouo & [illegible] electa induſtria perſona.*
3 *Induſtria per [illegible] quando [illegible] non habet certam & demonſtratam formam.*
4 *Prohibitio alienationis feudi quando non habet locum.*
5 *In [illegible] appellatione [illegible] etiam extranei.*
6 *[illegible]*
7 *[illegible]*
8 *[illegible] quidem [illegible] non ſuccedat qui feudo ſeruire non poteſt.*
9 *Matrimonium [illegible] innocem non compatiuntur.*
10 *Conuerſi non [illegible] ad feudum.*

CONSILIVM CCCIII.

Pro magnifico domino Claudio ex Comitibus Plozaſ[illegible] domi-

dominus Nomi contra [illegible] & [illegible] dominum Philibertum eius [illegible] & [illegible] [illegible] num.

D[illegible]

etiam conuer[illegible] ad feudum, & tamen c[illegible] ſi non habent [illegible] nec etiam neceſſitatio [illegible] vota religio[illegible] Imo [illegible] conuerſus perſona [illegible] in fin. de electi. lib. 6. [illegible] in conſ. 7. in titul. de cadu[illegible] 4. in tit. de regul. Gemin. in conſ. 41. c. 1. Curtius Iunio[illegible] feud. in 3. part. in [illegible] quæſtio princip. col. 4. in fin. [illegible] Calde. & Gemin. [illegible] feud. [illegible] Ratio igitur cur [illegible] feudo, non eſt propter ordin[illegible] [illegible] ſed quia cum habitet in monaſterio [illegible] non poteſt feudo [illegible] ratio magis militat [illegible] beneficiato qui magis aſtringitur ad letum [illegible] ſimplex conuerſus ad ſeruitium non [illegible]

¶ Sexto pro hac [illegible] adducitur dictum Bart. [illegible] concubina cleri[illegible] legitimantur per ſequens matrimonium [illegible] ex concubina clerici non beneficiati, ratio [illegible] eſt, quia ſtante beneficio concubina non poterat eſſe vxor. & ſi maius impedimentum matrimonii eſt in clerico beneficiato quam non beneficiato, licet vterque in [illegible] ſit conſtitutus, ad[illegible] dicendum eſt quo[illegible] mus impedimentum habendi feudum ſit in clerico beneficiato qua[illegible] non beneficiato, quia beneficium eccleſi[illegible] inimicum non compatiuntur, per ſupradicta. quod [illegible] Hoſtien. [illegible] ciat Præpoſit. [illegible] in fin. quæſ[illegible] text. in d. tracta. de praſcrip. col. 14. in fin. [illegible] quæſtio 1. partis. col. 1. [illegible] fortius [illegible] Baldus [illegible] in minoribus [illegible] ſed hoc non [illegible] præmiſſis [illegible] facta [illegible] Bart. [illegible] Solum ſupereſt ad contraria re[illegible] quæ ipſa iam diſſoluta videntur ex præd[illegible] ſed [illegible] declarationem reſpondeo in [illegible] & ad primum quod clericus primæ tonſuræ non prohibetur in feud[illegible] ſuccedere. Reſpondeo quod illud procedit in clerico non beneficiato, qui non prohibetur ſuccedere in feudo & [illegible] quia prima tonſura non aſtringit ad [illegible] ſuo officium ecc[illegible] ſecus videtur in clerico beneficiato qui tenetur ad [illegible] & officium, & in quo militat ratio in[illegible] feudi vt ſupra late viſum eſt [illegible] Bald. & Felin. in d. c. inter dilectos. col. 1. de fide inſtrum. [illegible] epiſcopus non perdit comitatum, [illegible] reſpondeo [illegible] textus non videtur probare dictum [illegible] quia [illegible] quod ille comitatus eſſet feudi. [illegible]

¶ Se[illegible] pondeo [illegible] illud procedere quando [illegible] debeatur [illegible] ſeruitium, quod per alium [illegible] contra [illegible] debet [illegible] quod [illegible] ſuccedere [illegible] [illegible] Ale[illegible] in d. conſ. [illegible] principaliter [illegible] Hector & domini [illegible] quinto [illegible] & Hector & Honmondus eſſent fratres [illegible] in quarto gradu, ſuccedant in bonis feudalibus quondam domini Petri [illegible] per [illegible] Breuiter vltra fratres patrue[illegible] [illegible] apita. § ſi vero neque fratres in authent. de hered. ab inteſt. [illegible] Bal[illegible] 9. Ad cuiuſcunque eſt præmiſſis ſecundum in 3. q. lib. 5. Alex. in d. [illegible] conſ. 5. Perſpectiu huius columnis 3. in prin. verſ. [illegible] idem probatur. [illegible] 4. & in conſ. 29. colu. 3. circa med. ver. dumis autem [illegible] [illegible] loquuntur Bald. & Alexand. [illegible] in bonis feudalibus [illegible] non reperitur aliter dec[illegible] [illegible] qui volunt ſuccedere [illegible] Pet[illegible] [illegible] videtur quod ſucce[illegible] [illegible] & ita [illegible] pondeo ad omnia ſupra ſcripta [illegible] uo

[illegible] Sauliani, die 13. Martii. MDXLVII. Aymo Craueg[illegible] ex Sauliano. I. V. D.

SVMMARIA.

1 *Quoties in actu ſit mentio alterius ad quem negocium pertinet, cenſetur actus celebratus nomine illius.*
2 *[illegible] quod mandato æquiparatur & trahitur retro ad [illegible]*
3 *[illegible] ſemper inſpici debet.*
4 *[illegible] non ex diuiſione pro creditore, non ſoluit ad vtilitatem [illegible] creditoris.*
5 *[illegible] debet vt trahatur ad caſum magis neceſſarium.*
6 *[illegible] fieri non debet.*
7 *[illegible] debet operari vltra communem intentionem [illegible]*

CONSILIVM CCCIV.

Pro Maria relicta quondam Philippi Iaconi de Marenis mandamenti Sauliani contra Emanuelem Iaconi eius filium & heredem dicti Philippi.

DIVINO ſubſidio ex corde poſtulato. In diuiſione bonorum Franciſci, Philippi, Nicolai, Andr[illegible] & [illegible] [illegible] ex loco Maren[illegible] mandamenti Sauliani aſſignatæ fuerunt octo iornatæ terræ prati [illegible] pro [illegible] eius vxoris & pro [illegible] Philippus [illegible] dictam Mariam [illegible] Quæritur an [illegible] quæ pecunia [illegible] [illegible] de[illegible] [illegible] non pertinet. ml. ſi ſocer § Iulius [illegible] matrimonii [illegible] pater [illegible] [illegible] filia [illegible] competit actio ſed marito aduerſus [illegible] promittentem [illegible] poteſtagere contra [illegible] actiones vxori cedat [illegible] Item habetur in l. ſi proce. C. de iure promiſſ. [illegible] videtur quod [illegible] Philippus [illegible] generaliter quod [illegible] actio non quæritur. § alter. in ſtitut. de inutil. ſtip. [illegible] [illegible] competit in virtute [illegible] quia non [illegible] expreſſe agatur [illegible] fin. Cod. [illegible]

¶ Nec videtur [illegible] quod maritus [illegible] dictam [illegible] pro [illegible] Philippus [illegible] per eius vxorem, & ſic quod illa aſſignatio facta fuerit [illegible] videatur [illegible] & ad [illegible] [illegible] ſuo [illegible] & [illegible] [illegible] aſſignationem ne in [illegible] [illegible] Mariam [illegible] dotis [illegible] virtute inſtrumenti dotalis. Ideo illa promiſſio [illegible] ad effectum ſecuti [illegible] diuerſum effectum vt co[illegible] aſſignat[illegible] ad toſtionem [illegible] cum ſimil. § Ru[illegible] effet [illegible] ipſorum [illegible] amplius [illegible] Mariam [illegible] [illegible] Mar[illegible] non omnis. in princip. ff. ſi certum [illegible] contrarium [illegible] agere poſſit ipſa Maria ad dictas [illegible] fundamentum [illegible] & [illegible] factam eſt nomine vxoris [illegible] ad quem & neg[illegible] actus celebratus nomine illius. [illegible] commune cum alio, [illegible] Bartol. & D[illegible] in l. 1. ſi fundum per [illegible] ff. de leg. [illegible] aſſignatione bonorum de [illegible] Philippus & [illegible] aſſignatio pro [illegible] ſine [illegible] pertinet ad [illegible] aſſigna [illegible] nomine [illegible] Secundo dicitur facta [illegible] [illegible] per [illegible] proptere competit [illegible] actus non [illegible] qui debet ratificare. l. ſi pupilli. §. ſed ſi ego. vbi Bart. ff. de negot. geſt. l. ſi ſeruum. ff. de præcar. cap. [illegible]

[illegible]

Ideo perinde [illegible] Mariæ [illegible] ornatas pro dotibus suis & [illegible] assignationi [illegible] quæ præsentia singulis [illegible] *l. unus daturum. §. 1. in verbo, si præsens* & ibi Bald. [illegible]

¶ Et quod ex ratificatione [illegible] assignationis [illegible] acquiratur ipsi ratificanti [illegible] volunt Specul. *in tit. de loca. §. nunc aliqua. ver.* 47 ubi [illegible] pro dimidia. Idem voluit Bart. *in l. si paternus. colum. 2. C. commun. utri. iudi.* ubi [illegible] tempus [illegible], utrique acquiritur ius pro dimidia refert & sequitur Decius *in consi. 50. col.* [illegible] & quod ratificanti acquiritur ius quando eius nomine actus est celebratus, voluit Abb. *in consi.* [illegible] *2.* quem refert & sequitur Deci. *in l. quod tut.* [illegible] *ff. de reg. iur.* Ad [illegible] Curtium Iun. [illegible] *in consi. 49. col. 1. parte ea mod. Ias. in l. bonis modis. in prin. col. 4. nu. 9. de leg. 1.* ¶ Nec dicatur quod ex sola ratificatione [illegible] ius perfecte [illegible] ratificanti cedantur actiones per eum qui nomine ratificantis stipulatus est. *l. possessio quoque. §. fi. ff. de acq. poss.* [illegible] *C. de neg. gest.* [illegible] & quia illud procederet si maritus Mariæ, qui stipulatus fuit nomine ipsius Mariæ, non possideret ita quod agendum esset contra eios fratres assignantes, sed ubi maritus possidet aut eius heredes, frustra tractatur de cessione, cum tantum opus sit ut bona repetantur. Si enim tenetur stipulans nomine alterius ad cedendum actionem contra tertium ei cuius nomine stipulatus est, à fortiori si possideat rem, quam stipulatus sit nomine alterius, illam tenebitur restituere, cum cessio actionis fiat ut res recuperetur, & propter unumquodque tale & illud magis. *l. quanto magis ff. de* [illegible] *multo magis C. de sacrosanct. eccles.* ¶ Secundo respondeo quod etiam si fratres Philippi qui assignauerant illa bona pro dotibus illa possiderent, adhuc non esset necessaria cessio actionum contra eos propter iuramentum quod præstiterunt ex quo iurame[illegible] quæritur absentibus [illegible] ut per Al[illegible] .207. *col. 1. lib. 7.* ¶ Ex præmissis intentio Mariæ abunde & efficaciter videtur comprobata. Solo [illegible] superest ad contraria respondere, ex quorum solutione [illegible] splendidius [illegible]. Itaque non obst. tex. *in d. l. si forte. §. 1. ff. solut. matr.* [illegible] *C. de do. promiss.* [illegible]

[illegible]

quæ tenebat [illegible] od [illegible] M. [illegible] ipſod [illegible] ne [illegible] aſſignata [illegible] dante [illegible] dedit [illegible] dum erat [illegible] erant. ¶ [illegible] reſpondeo [illegible] animo [illegible] aſſignationem [illegible] ipſi Mariæ non fecit [illegible] faciend per ipſam Mariam, ſed aſſign [illegible] bon. [illegible] ſoluti, quia aſſignatione mediante [illegible] Mariæ & pre mune [illegible] aſſignante ergo ipſam Mariæ [illegible] Mariæ nec [illegible] aſſignati [illegible] Mariæ, [illegible] rat. ¶ Sexto [illegible] ad aliquid particula [illegible] pactum [illegible] aſſignatio [illegible] *l. de præto ff. de pub.* Conſequenter [illegible] quod vxor ratificat [illegible] pro dotibus ſuis, & ſic quod [illegible] bona [illegible] primo in illa aſſignatione [illegible] ipſius Philippi patri ex obliga ipſi ſua [illegible] dotium & pro hereditaria portione, & qui Philippus partem ſuam habebat in ipſis bonis aſſignatis. & ſic etiam ipſe Philippus dicitur aſſignationem fecit pro parte ſua, ſed ipſe maritus dici non poteſt quod ſibi ipſi aſſignauerit, quia nemo ſibi ipſi poteſt [illegible], aſſignationem igitur fecit Philippus pro vxore ſua & eius nomine, ergo aſſignatio aliorum [illegible] um cenſeri debet facta etiam nomine vxo-
6 ris vt æqualis ſit determinatio. *l. iam hoc iure. ff. de vulgar.* & ne † vna & eadem res diuerſo iure cenſeatur *leg. cum qui ædes. ff. de vſuca.* ¶ Octauo conſidero quod iſte maritus videtur acquiſiuiſſe iſtas octo [illegible] natas ex dote ipſius Mariæ, ſed in dote ſpeciale eſt quod acquiſitum ex pecunia dotali acquiritur mulieri licet fiat acquiſitio nomine acquirentis. *l. vxor marito. ff. de dona inter vir. & vxor.* Decius in *l. ſi pecuniam. in t. no. ff. ſi cert. peta.* Quid hic dicemus vbi acquiſiuit maritus ex dote vxoris & nomine ipſius vxoris, nam generale eſt in omnibus quod res empta nomine alicuius & de eius pecunia acquiritur ei cuius nomine comparatur. *l. ſi ex ea pecunia. C. de rei vendi. gloſſ. fin. in c. cum tu. de vſur.* imo ſufficit acquiri nomine alicuius licet non ex eius pecunia vt aliquis [illegible] tatur per ſupra adducta. ¶ Nono conſidero vltra fundamentum iuris [illegible] fundamentum conſiſtens in æquitate, nam æquitas a iure comprobata vult quod vbi lucrum aliquis facit [illegible] alterius, id mihi reſtitui debeat. Abb. *in conſil. 6. in ſ dubio. lib. 2. per text. in l. ſi me & Titium. ſi cer. pet.* Sed Philippus maritus habuit iſta bona propter dotem vxoris qua dote ceſſante nonilla habuiſſet, ergo teneri videtur ex æquitate ad reſtituendum [illegible] bona ipſi vxori, cum tale lucrum non euoniſſet ex fructu [illegible] ipſa ſubſtantia rei dotalis. ¶ Non obſtat quod [illegible] aſſignationis illarum terrarum non debet operari [illegible] intentionem fratrum aſſignantium, quia fateor, ſed dico quod intentio aſſignantium fuit vt bona aſſignata eſſent in ſolutum, quæ [illegible] pertinet ad vxorem creditricem. Ex aliis etiam [illegible] arguitur intentio ipſorum fratrum per late
7 ſupra adducta. ¶ Secundo reſpondeo † quod actus agentium non debet operari vltra eorum intentionem primariam vel ſecundariam ideo [illegible] voluntas primi [illegible] tans eſt quod non deficit [illegible] Bald. *in l. ſi ab ſtinuit. per illum text. in 2. oppoſi. C. ſi cert. pet.* Iaſo. *in l. 3. in princ. ſi colum. 5. verſ. ad hoc reſponde dupliciter. ff. de acquir. poſſ.* [illegible] *in conſ. 2. colum. 4. circa medium lib. 2.* Ideo plerumque [illegible] quod [illegible] tur, tacita [illegible] obligatio. *l. ſi in prin. ſa ſta. ff. commoda.* [illegible] licet primaria intentio fratrum aſſignantium fuerit [illegible] dote & conſulere eorum indemnitati, [illegible] tamen [illegible] fuit tradere in ſolutum iſta bona Mariæ creditrici ad quam negocium pertinebat vt mediante tali ſolutione liberi [illegible] ab obligatione. ¶ Tertio reſpon[illegible] quod iſta donatio [illegible] aut aſſignatio bonorum [illegible] nomine & [illegible] ipſius Mariæ, hoc venit in [illegible] neceſſitatem ipſius aſſignationis, nam cum aſſi[illegible] liberari ab obligatione dotis, fecerunt illam [illegible] pro dotibus & voluerunt quod ratificaretur [illegible] Mariam, ergo in conſequentiam neceſſariam dicun-

[illegible] eſſent ipſius Mariæ cui [illegible] ratiu. Iſtam reſponſionem [illegible] *non omnia in principio. [illegible] cert. pet.* [illegible] *in conſ.* [illegible] *colum* [illegible] enim lucrum quod Maria [illegible] pro dotibus, ergo [illegible] habere bona iſta pro dotibus [illegible] & [illegible] hac opin. adduco Socin. *in conſ. 21* [illegible] *poſt vnd. ve* [illegible] *lib. 3.* vbi Socin. [illegible] quod [illegible] rerum facta inſtrumento [illegible] pro dotibus vxoris alterius fratris [illegible] dote quando talis adiudicatio mulier [illegible] mulieris [illegible] Bartol. *in conſ. 123. Titius.* quia [illegible] dotem [illegible] quin non poſſit acceptare ſi velit. ¶ Sed [illegible] Mariæ [illegible] quod perdat dotes propter ſtuprum [illegible] Paulus de Caſtro *in conſ. 147.* [illegible] *dubium.* [illegible] reſpondeo primo quod ſtuprum non [illegible] probatum. Secundo dico etiam ſi [illegible] probatum eſſet, [illegible] ſeruari [illegible] Alexand. *in l. ſororem.* [illegible] *in l. cum quidam puella. colum. 2. in fin.* [illegible] *colum. fin. de iud.* vbi dicit opin. Alexan. eſſe æquiorem [illegible] allegat text. *in l. ſi vxor. §. 1. ff. de adulter.* Eandem opin. te[illegible] *in l.* [illegible] *C. de fideicom.* vbi dicit opin. Paul. de Caſtr. [illegible] & quod contra eum conſuluerat. Eandem opin. contra Paul. tenet Crotus *in l. 4. § Cato colum. 40. ver. pro quo* [illegible] *ff. de v. o. in prima lectura & in ſecunda lectura colum. pen. ver. 6. quarit Bart.* [illegible] confirmat hanc opin. quia leuius eſt crimen ſtupri quam adulterii cum leuius puniatur [illegible] *§. item l. Iulia. inſtit. de pub. iud.* [illegible] *non aſſeramus. 24 q. 1.* vbi quod crimen dicatur grauius, quod grauius [illegible] iudicatum, quia minor eſt iniuria quæ fit defuncto quam illa quæ fit viuenti, iuxta not. per Bartol. *in d. l. ſi fideicomm. C. de fideicomm.* Sed vltra Scriben. in hac materia dico quod iſta opin. inevitabiliter probatur per textum *in §. fin. in authent. de reſtit. & ea quæ parit* vbi quod vidua luxurioſe viuens patitur pœnas, quas patitur mulier ſecundo nubens infra annum luctus de iure ciuili. not. Deci. *in l. 1. colum. 2. in fin. C. de ſecun. nup.* pœnæ autem mulieris nubentis infra annum luctus enumerantur *in d. l.* ſed inter illas pœnas non enumeratur amiſſio dotis, ergo dicendum eſt dotem amiſſam non eſſe. & hoc arguendi modo vtitur Iuriſconſultus *in l. 1. patre furioſo. ff. de his qui ſunt ſui vel alieni iuris.* mulier enim ſecundo nubens infra annum luctus ſolum perdit ea quæ habuit à marito titulo lucratiuo, vt *in d. leg. 1. C. de ſecund. nupt.* ſed dotem à marito non habuit ex cauſa lucratiua. Ergo etiam vidua luxurioſe viuens ea ſolum perdet quæ a marito habuit a titulo lucratiuo cum parificetur mulieri ſecundo nubenti infra annum luctus & viduæ ſtuprum committenti. Pro eadem opinio. adduco in fortioribus terminis Feder. de Senis *in conſ. 167. Mulier accuſata.* vbi ſi vxor habeat copulam carnalem cum alio eo tempore quo erat communis opinio & fama probabilis de morte mariti, non incurrit pœnas legales impoſitas pro crimine adulterii, quia illa fama & communis opinio excuſat mulierem à dolo. ſi viuente marito, mulier excuſatur a pœnis legalibus adulterii, propter famam de morte mariti, quid dicemus in vidua mortuo vere marito. Eandem opinio. ſoleo aliter comprobare reſpondendo ad argumenta Pauli de Caſtro *in d. conſ. 147.* ſed hic paucis iſtis contenius ero, quia ſatis abunde omiſſum eſt conſilium, & quia ſatis videmur habere text. pro hac opinio. Sauiliani [illegible] Martii. MDXLVII. Aymo Crauetta ex Sauiliano. I. V. D.

S V M M A R I A.

1 *An ſubſtitutio facta vulgariter & pupillariter continere poſſit fideicommiſſariam.*
2 *Magis attenditur effectus ſubſtitutionum quam ſonus verborum.*
3 *Quo caſu* [illegible] *vulgariter, cenſeatur abuſiue poſitum.*
4 [illegible] *erba ſubſtitutionis habent tractum temporis.*

CONSILIVM CCCV.

Conſilium vt ſubtile ita admodum vtile in materia ſubſtitutionis directæ quando obliquetur, pro Iacobina vxore Ioannis Mariæ Ranesi contra heredes Ludouici Innocentij Lenini de Sauiliano.

[illegible]

[illegible]

[illegible] ut [illegible] quod [illegible] *matrem.* [illegible] Car. & Imo. [illegible] *in c. cum ſuper colum. fin. de offi.* [illegible] modo, &c. æquipollet [illegible] go, valeat vt valere poteſt. [illegible] *Calca. in conſ. 62. colum. 4 circa medium. per text.* [illegible] *praela. lib. 6.* ideo ſtante iſta clauſula res poſita [illegible] difficultatem. ¶ Ex præmiſſis abunde [illegible] & confirmata legitur iſta concluſio quod ſubſtitutio [illegible] agit [illegible], ſit fideicommiſſaria conſiderato effectu, [illegible] imo etiam ſecundum ſonum verborum [illegible] clauſulam [illegible] & illam clauſulam omni meliori [illegible] & [illegible] per verba [illegible] in quo [illegible] tangere ad ſubſti[illegible] modo, &c. [illegible] in quibus directo non ſub[illegible] allegati [illegible], quia ex [illegible], tamen [illegible] res, [illegible] primum [illegible] aliter, quia [illegible] verborum attendi non debet [illegible] conuenit fideicommiſſa [illegible] ¶ Secundo reſpondeo quod [illegible] pro [illegible] valere poſſet ſubſti[illegible] directa pupillari [illegible] nunquam [illegible] ergo ad obli[illegible] ſupradicti, maxime [illegible] apparet expreſſe de voluntate [illegible] quod voluit ſubſtituere iure fideicommiſſi. ¶ Tertio reſpondeo quod etiam conſiderato [illegible] verborum voluit teſtator ſubſtituere iure fideicommiſſi propter clauſulam codicillarem & aliam clauſulam omni meliori modo, &c. [illegible] quælibet de per ſe ſufficiens eſt per ſupradicta. ¶ Ad ſecundum argumentum fuit ſupra in ſpecie abunde reſponſum in tertio fundamento facto pro parte affirmatiua, ideo non repeto. Saulliani 23. Martii. M D X L V I I. Aymon Crauetta ex Saulliano, I. V. D.

S V M M A R I A.

1 A[illegible] à ſufficienti partium enumeratione, de iure procedit.

2 [illegible] recipro[illegible] tacita inter aliquos inducatur, duo copulatiue requiruntur.

3 [illegible] conditionale non tranſmittitur ad heredes.

4 [illegible] ad quod vocatur ſuperſtite, tranſmittitur ad heredes ex [illegible] defuncto.

CONSILIVM CCCVI.

In [illegible] teſtamenti Simeonis Turlati [illegible].

D[illegible]

[illegible] libe[illegible] ex [illegible] non [illegible] & tuncto [illegible] ctu poſit [illegible] trui, quia [illegible] datu[illegible] ſtro *vel pl. familia. § cum qu.* [illegible] §. *cum ita. colum. 1. ff. ad Trebellia.* C[illegible] *poſt medium* [illegible] *colum. penult.* [illegible] *in repet. l. Centurio. col. 24. verſ. 3.* [illegible] *ff. de vulg.* Ripa in l. [illegible] *colum. 4 circa medium C. de pactis.* ob id non poſſent liberi [illegible] Antonio patruo ſi defunctus eſſet ſine liberis cum ſolum [illegible] rentur [illegible] ad portionem patris, ergo multo minus poterunt ſuccedere liberis Antonii [illegible] & quibus [illegible] tamen videtur impoſſibile. Aut volumus dicere [illegible] ſubſtitutio facta Anto[illegible] decederet ſine [illegible] ſtat [illegible] tibus in eſſis, ex [illegible] poſit *in conſ.* [illegible] *colum. 2.* [illegible] *in conſ. 21.* & adhuc non vid[illegible] quia quod [illegible] filios Antonii [illegible] fuerit [illegible] ad bona & hereditatem ipſius Antonii [illegible] beri [illegible] ſtituti Antonio non expreſſe, quia de [illegible] verbum nullum [illegible], vbi tacite vocati eſſent [illegible] vacatio tacita [illegible] tionem [illegible] dictum eſt. ¶ Aut [illegible] te liberi [illegible] filiæ Antonii ex ſubſtitutione [illegible] ca tacita, quia liberi Facini & Antonii heredum [illegible] tacite cenſe[illegible] ſubſtitu[illegible], & ſimiliter non [illegible] admittendi ex hoc capite, quia vt [illegible] ſubſtitutio † reciproca tacita inter aliquos [illegible] copulatiue requiruntur [illegible] mum, 2 quod fiat ſubſtitutio [illegible]. Secundo [illegible] habetur *in l. poſt.* [illegible] *de vulg.* [illegible] §. *cum ita. ff. ad Tre.* Cu[illegible] ſen. [illegible] cto [illegible] neutrum iſtorum [illegible] ſubſtitutione [illegible] post mortem aliquorum [illegible] tem liberi [illegible] de morte [illegible] deceden[illegible] dicantur [illegible] tacite [illegible]

[illegible]

SVMMARIA.

1 Statutum de lucro [illegible] generaliter loquens generaliter intelligi debet.
2 [illegible] habilitas ex alio capite
3 [illegible] non debet eſſe contraria
4 Cor[illegible] quæ sequuntur ex interuallo [illegible]
5 Appellati [illegible] teſtamentis non venit contractus.

CONSILIVM CCCVII.

Pro Iacobo Carboſio de Foſſano contra Margaritam vxorem Antonini Maglani.

DIVINO ſibi [illegible] Statutum [illegible] ſub Rubrica de [illegible] quod [illegible] liberos ex eo matrimonio non [illegible] quam mari[illegible] dotis liberam & quietam & expedi[illegible] & propinqui mulieris habe[illegible] medietat[illegible] eodem et ſtatuto modico dato in[illegible] habens filium vel filios non poſſit facere nec [illegible] codicillo quin eius [illegible] in totum, modo deceſſit Catharina relicta quondam [illegible] de Richa ex Foſſanu primi mariti relicta Margarita [illegible] herede, relicto etiam Lazaro Garboxio eius ſecundo [illegible] quæritur, an dictus Lazarus, lucratus fuerit dimidiam dotis dictæ Catharinæ ex ſtatuto prædicto: ¶ Breuiter non [illegible] parte puto eſſe locum lucro ſtatuti de dimidia
1 par[illegible] fundamento conſidero † quod ſtatutum de lucro dotis generaliter loquens, generaliter debet intelligi ſiue ex[illegible] matrimonio ſiue non, quo ad hoc vt in totum [illegible] ipſum ſtatutum. Eſt verum quod extantibus liberis [illegible] lucrum ſtatuti & reducitur ad terminos *l. hac edictali. C. de ſecund. nupt.* ſecundum Bart. & Doct. ibi [illegible] idem Bartol. *in quæſtio. 7. Mulier habens amplum patrimonium. col. 3 [illegible] Bald. in con. 495 Quædam domina Helena. colum pen. lib. 5.* Paul. de Caſt. *in conſ. 59. Ad primum quæſitum reſpondetur quod licet [illegible] in 3. dubio lib.* [illegible] *in conſ. 9* Decius *in authen. præterea in 4. not. C. vnde vir [illegible] vor.* [illegible] Bald. *in d. conſ. 495. col. pen.* [illegible] extat liberis [illegible] liberos primi ma[illegible] cenſeatur correcta. *l. hac edi[illegible]* [illegible] licet Bald. non allegat *in conſ. 283. col. 1.* [illegible] Bald. pro nunc affirmare non audeo, quia non expedit. ¶ Hoc ita præſuppoſito quod tale ſtatutum de lucro dotis locum habeat non obſtantibus liberis primi matrimonii, [illegible] in ſecundum terminos *d. l. hac edictali.* dico quod ex quo non extat [illegible] ex primo matrimonio, locus eſt ſtatuto vt loquitur, id eſt, quod ſecundus maritus habeat dimidiam dotium & reducatur ad æqualitatem cum [illegible] primi matrimonii vt voluit Paulus de Caſt. *in conſ. 448. Viſo caſu & allegationibus colum. 2. circa med. lib. 2.* In vno tantum tenet [illegible] lucri iſtu caſu ſuper filiam primi matrimonii, quia ſtatutum vult quod maritus habeat dimidiam liberam ab omni onere funerali, ſed propter diſpoſitionem *d. l. hac edictali.* reduce eo dotem ad æqualitatem, tenetetur maritus ad iſtud onus pro rata ſua. ¶ Non ob[illegible] modo concluſioni ſupra firmatæ diſpoſitio ſequens eiuſ[illegible] ſtatuit quod mulier habens filios non poſſit facere quin [illegible] ſuccedant in totum: quia reſpondeo, quod iſtud ſtatu[illegible] parte debet intelligi quando ceſſante ordinamento [illegible] in totum ſucceſſuri, quia quoties tracta[illegible] præſupponitur habilitas ex alio capite, puta, quæ-

[illegible] *6 in cap. 1. de treuga* [illegible] *col. 62 [illegible] in fin.* [illegible] quæ videntur [illegible] diam [illegible] poſſit [illegible] dict [illegible] tio ſtatuti [illegible] [illegible] quando [illegible] de [illegible] contrariet [illegible] diſpoſi[illegible] tus [illegible] ſidoti, quando liberi [illegible] ex [illegible] matrimonio, [illegible] *hac edictali.* [illegible] dicatur [illegible] tum præcedente detere [illegible] lucrum dotis [illegible] tibus liberis primi matrimonii, qui [illegible] gnant detere ido lucrum dotis non [illegible] co matrimonio, ergo non ceſſat lucrum [illegible] matrimonio licet eo caſu videatur reduc[illegible] tem vt ſeruetur æqua[illegible] cuiuſ[illegible] primi matrimonii ſecundum Paul. de Caſt. [illegible] 48. [illegible] Roman. *in conſ. 44.* vbi Roman. volu[illegible] ceſſantibus illis verbis vniuerſalibus [illegible] ¶ [illegible] pro 4
reſponſione conſidero quod [illegible] ſunt [illegible] quæ ſequuntur ex interuallo, quam in [illegible] quæ ſunt [illegible] continenti, ideo propter interuallum temporis partes cenſentur receſſi[illegible] à præcedenti proteſtatione. *l. per intentionem. C. de vſuris.* Actus enim qui fit ex interuallo, dicitur magis deliberatus Deci. *in l. legem. col. 3. ante med. C. de pactis.* itaque ſi in ſtatutis factis ex interuallo interpretatio ita fieri debet vt contrarietas fugiatur, quanto fortius in verbis eiuſdem ſtatuti talis interpretatio habenda eſt. ¶ Quarto dico quod verba generalia ſequentia quod filii ſuccedant in totum non ſunt ſufficientia ad inducendum correctionem præcedentium [illegible] pect[illegible] interdicatur. Bartolus *in l. pr[illegible] ſed per illum text.* [illegible] *appell.* Iaſo. *in conſ. 164. col. 1. in fin. lib. 1. per hoc text. in §. tribus in authent. quibus modis natu. eff. ſui.* quem text. ad hoc citat deciſi. Neapol. *deciſ. 321. num. 6.* [illegible] ad derogandum verbis præcedentibus de lucro [illegible] nece[illegible] erat dicere quod filii ſuccederent in totum, nec tunc extantibus aliquib. liberis locus eſſet alicui lucro dotium in fauorem mariti, & verba generalia ſequentia potius debent intelligi ſecundum præcedentia quam vt inducatur correctio *l. quoties. C. famil. ercisc.* & lex ſequens generalis reſtringitur per præcedentem vt correctio euitetur. Roman. *in conſ. 399. Vt præſens. colum. 3. poſt med.*

¶ Quinto reſpondeo quod diſpoſitio ſtatuti ſequens nullo modo derogat præcedentibus nec in genere nec in ſpecie, etiam citra auxilium diſtinctionis, quia ſtatutum in illa parte qua dicit filios in totum ſuccedere, ſolum loquitur reſpectus matris vt mater nihil poſſit diſponere teſtando vel codicillando in præiudicium filiorum quin filii in totum ſuccedant, & ſic quatenus attinet ad factum matris, illud filiis non nocet quo minus [illegible] ſolidum ſuccedant, ſed reſpectu [illegible] ſtatu[illegible] in ea parte nihil [illegible] quod [illegible], verba igitur ſequentia prolata reſpectu matris debent intel[illegible] & reſtringi ſecundum illum reſpectum [illegible] *l. ſi quis domum. §. quid autem. ff. locati. l. profectitia § [illegible] de iure dotium. l. debitor. [illegible] ff. ad [illegible] rebell.* quæ [illegible] *pro debilitate. col.* [illegible] *de offic. de* [illegible] *83. col. 1.* ¶ Sexto reſpondeo quod ex verbis illis [illegible] quen-

tibus

[illegible]

Ideo [illegible] per viam contractus poſſe [illegible] ma. to [illegible] donare ex pacto appoſito [illegible] & matrimonii, vel etiam cont[illegible] potuit præbere cauſam [illegible] tuendo dotem. *l. cum quid. ff. ſi certum petatur* [illegible]. Ex quibus concludo eſſe [illegible] ſtatuto circ[illegible] Item [illegible] æqualis fiat condi[illegible] ſecundi & M[illegible] matrimonii & ita de iure reſpondeo ſaluo [illegible]. Sauiliani. 4. Aprilis. 1547. Die [illegible] Ap[illegible] in cœlo [illegible] horam [illegible] quatuor arcus [illegible] & [illegible] per tranſuerſum colligati, q[illegible] amplior e[illegible] alijs duobus amplitudine & longitudine [illegible] è regione ſolis [illegible] & [illegible] longus & [illegible] cœlo ſereno. deinde [illegible] nunc [illegible] de morte Franciſci [illegible] Francorum [illegible] Aymo Crauetta, ex Sauiliano [illegible].

S V M M A R I A.

[illegible] non poteſt tollere aut auferre iura priuatorum ſine cauſa.
[illegible] ubi [illegible] imponatur.
[illegible] generalia generaliter intelligi debent, etiam in odioſis.
[illegible] de parte aliqua, intelligitur de qualibet particula etiam minima.
Quando [illegible] cauſa mortis [illegible] dicitur ultima voluntas.
Verba [illegible] negatiue concepta, omnia comprehendunt etiam inſolita.
Verba debent intelligi, ſecundum qualitatem perſonarum inter quas proferuntur.

CONSILIVM CCCVIII.

Pro hominibus & communitate Reuelli contra Excellentiam Marchionalem.

D[illegible] ſubſidio ex corde [illegible]. In franchiſiis hominum Reuelli [illegible] habe[illegible] verba ſequentia. [illegible] & [illegible] quoda[illegible] pe[illegible] Reuelli [illegible] ratura a modo [illegible] beatiq[illegible] [illegible] dominu[illegible] al quem ca[illegible] [illegible] ſufficientem [illegible]

[illegible] priu[illegible] *contra* [illegible] in [illegible] intel[illegible] D[illegible] *in l fin. ff. de* [illegible] *in l Barbarius. col.* [illegible] *col. post med. lib. 1. in conſ.* [illegible] *lib.* Decius. Neapo[illegible] continue reſiden[illegible] ſpatiodi, in effectu p[illegible] nibus debitus pro conditi[illegible] giatu vel forte ſubditi agentes [illegible] conducere, vel [illegible] gentius abſtinere ab a[illegible] gociationibus ſolitis aut quas de nouo [illegible] tur, Mar[illegible] habet ius imponendi [illegible] Marchi[illegible] natu, pari ratione videtur [illegible] ſit cogi ad [illegible] hoſ[illegible] de poteſtate [illegible] quod [illegible] eſt [illegible] collecta aut ſubſidium non [illegible] tatis quando aliter ſuccurri non poteſt [illegible] *oper. libe.* quod dictum p[illegible] *per l. admonendi.* [illegible] *in fin. verſ. & quod* [illegible] *ius and.* Ideo collecta continue non impon[illegible] bus ſed per temporum interualla ſec[illegible] ſitatis, ſed [illegible] neceſſitas non con[illegible] cet egeant [illegible] tales ho[illegible], non ſequitur [illegible] nitas pro conditione ipſorum, aut q[illegible] ſoluere, alioquin ſeq[illegible] eretur quod [illegible] nimia alimenta principis, & profect[illegible] mentis curiali[illegible] quare non [illegible] præſta[illegible] habitandi. ¶ Secundo reſpondeo quod [illegible] dio ſeruatur æqualitas & imponitur [illegible] pro qualitate locorum, ſed illud [illegible] deſideratur ab hominibus Reuelli [illegible] quod ipſi ſoli grauentur ad onu[illegible] in oneribus fugienda eſt. *leg.* [illegible] *lib. libro decimo.* Bal[illegible] *in leg.* [illegible] doct. Ex quibus infertur quod [illegible] minus cogere ſubditos [illegible] te ſua vbi aliter ho[illegible] mum dicitur oport[illegible] cogi ad [illegible] & [illegible] po[illegible] pe[illegible] co[illegible] ctam [illegible] po[illegible] æqualitatem. & [illegible]

3 [illegible] quod [illegible] tamen [illegible] Cal [illegible] in conſil. 24. in titul. de pr [illegible] Cod. de collatio. [illegible] ad hoc [illegible] D [illegible] eſt [illegible] prehende [illegible] onus [illegible] alimenta [illegible] Franchiſia [illegible] & quod Franchiſia [illegible] fore [illegible] hinc videmus [illegible] fore [illegible] hoſpitium [illegible] etiam [illegible] ſeculari [illegible] communem vſum loquendi [illegible] nata [illegible] nem foreſtium [illegible] quens [illegible] verba franchiſiæ [illegible] intelli [illegible] [illegible] quod tamen Caſſius [illegible] Labeo [illegible] Tit. [illegible] Dig. de ſuppell. [illegible] Quod procedit in qualibet materia etiam pœnali [illegible] in qua [illegible] eligi debent ve [illegible] cundum communem [illegible] Abb in cap. 2. in prim. de arb. in cap. 1. column. fin. de iudic. & in capit. per tuas co'umn. ſecunda. vbi Aretin. column quarta ſe probat. Iaſ in l. ſtipulatio iſta § hec quoque. in fin. Dig. de verb. oblig. in [illegible] fin. column. fin. Cod. de ſu [illegible] & in conſil. 51. colum 3. [illegible] libro tertio. multo magis intelligenda erunt verba ſecundum communem vſum loquendi [illegible] materia franchiſiæ in odi [illegible] & ad fauorem ſubditorum. l. fin. ff de conſtit. [illegible] de fauore libertatis contra onera [illegible] l. libertas. ff de regul. iuris. ¶ Sed diceret aliquis, [illegible] vſus loquendi probari debet de tempore Franchiſiæ [illegible] foreſtaniæ intelligeretur de onere hoſpit [illegible] & quod foreſtaniæ tunc dicerentur loca aut membra d [illegible] ad hoſpitium forenſium. Alexand. in l. 5. in princ. column. [illegible] ff. de verbor. in obligat. Fulgo. in conſil. 165. In quæſtione propoſita [illegible] penult. quem refert & ſequitur Decius in capit. præſentia. [illegible] num. 10. verſicu. 5. fallit. de probat. tradit etiam Curtius iunior in conſilio 5. colum 6. & in conſil. 166 column. tertia. ſed iſta probatio videtur impoſſibilis cum Franchiſia facta fuerit de anno 1327. & die 15 menſis Septembris. ¶ Ad iſtud reſpondeo quod ſufficit [illegible] communem vſum loquendi per tempus cuius initii memoria non extat in contrarium, quia hoc probato præſumitur quod fuerit talis vſus de tempore conceſſionis Franchiſiæ. [illegible] ſpecie declarat Socin. in l. Gallus. § ſi ante. colu. fin. Digeſt. de liber. & poſthum. vbi refert Cuman. ita conſuluiſſe. Sed [illegible] Socin. adducto Doctor. in cap. cum apoſtolica. de his quæ fiunt a [illegible] ſine con. cap. vbi laicus non poteſt retinere decimas niſi conceſſas ante Concilium Lateranenſe, quærunt doct. quomodo probabit laicus conceſſionem ſibi factam ante illud concilium Lateranenſe. nam iſta probatio videtur impoſſibilis cum [illegible] poſſit de hoc teſtificari, reſpondent Doctor. quod [illegible] probari laicum poſſediſſe decimas per tempus cuius in [illegible] non extat in contrarium, quia hoc probato, præſumitur conceſſionem decimarum factam eſſe ante Concilium Lateranenſe alias eſſet grauare ad probationem impoſſibilem. [illegible] in conſil. 156. colum. 1. lib. 2. tertio principaliter arguitur, & poſito & non conceſſo verbum illud foreſtaniæ aliam ſignificationem habere poſſet, tamen cum ad præmiſſam ſignificationem referri poſſit, dico quod latiſſimè interpretari debet vt omnia comprehendat cum agatur de conceſſione principis de cuius ſolius præiudicio tractatur. d. l. fin. ff de conſtit. princ. & quia agitur de fauore libertatis citra præiudicium tertii cuius libertatis fauore latiſſima etiam haberi debet interpretatio. dict. leg. libertas. ff. de reg. iur. imo etiam ſi ageretur de materia ſtricta adhuc idem dicendum eſſet, quia facta eſt conceſſio verbis vniuerſalibus, nam in primis verbis Franchiſiæ quæ ſupra in themate relata ſunt, dicitur de omnibus & ſin[illegible] terris ſucceſſionibus, accunzamentis, inueſtituris, iuua[illegible] ayronis, culmagiis, zabotatiis, ſuteſtariis, &c. quæ ver[illegible] omnib. & ſingulis ſunt vniuerſalia. l. 1 vbi late Doct. ff. de leg. 1. [illegible] in verbis ſequentibus ſupra relatis in themate dictum [illegible] nes Renelli moleſtari non poſſunt ratione aut [illegible] foreſtaniæ. quæ dictio alicuius eſt etiam vni[illegible] prehendens. l. ſi ſeruum. § præter ait. vbi Bart.

[illegible] in quali [illegible] 4 [illegible] in verb. parte de [illegible] & quod dictio aliqui [illegible] in conſ. 19 colum [illegible] Mo [illegible] ſumitur [illegible] [illegible] [illegible] ſunt [illegible] in conſil. 26 [illegible] alii [illegible] Bald. in conſil. 316. Rex Romanorum colum 3 [illegible] quod [illegible] la personæ [illegible] nullus excipitur. Alibi [illegible] Senis [illegible] conſil 84. in pacto. [illegible] termino [illegible] omnia comprehendit nullo excepto. Alibi [illegible] Geminianus cap. de [illegible] colum. de immunitate lib. 6. quod vbi lex [illegible] ſtatem [illegible] nullo [illegible] omnibus caſis, nulla certe [illegible] aut excepta quod G[illegible] dictum refert & ſequitur [illegible] conſil. 13 col. [illegible] lib. 4. Itaq. nullum onus foreſtaniæ cenſetur excluſum aut exceptum in verbis franchiſiæ vniuerſalibus quod[illegible] onus illud ſit, ſiue maximum ſiue minimum. ¶ Amplius [illegible] poſito & non conceſſo, verbum foreſtaniæ improprie comprehenderet onus illud hoſpitandi, quod ipſum tamen propriſſimè comprehendi ex verbis & mente contrahentium, ad ipſe tamen verba franchiſiæ vniuerſalia ad tale onus hoſpitandi pertinerent, quia iſta eſt natura dictionis aliquis vniuerſalis, vt omnia comprehendat etiam quæ improprie veniunt. gloſſ. in l. 2 in verbo alias Cod. de quadr. præſcript. vbi licet appellatione actionis proprie non veniat officium iudicis, iſtud tamen fallit quando fit mentio de actione verbis vniuerſalibus: puta ſi dicatur, quælibet alia actio, nam tunc venit officium iudicis licet [illegible] improprie dicatur actio, quam gloſſ. ad hoc propoſitum citat Alexan. in conſil. [illegible] 5. column 2. verſ. accedunt illa verba lib. 2. illam etiam gloſſ. pro ſingulari ad hoc citat idem Alex. in conſil. [illegible] lib. 6. Iaſ. in con. [illegible] colum. 2. poſt med. in conſil. 63. col. 3. ante med. lib. 3. & in conſil. 115 colum. 8. libr. 4. [illegible] gloſſ. in clem. 2. in verbo, quotam [illegible] de vita & honeſt. cleri. vbi licet appellatione beneficii non veniat penſio. [illegible] de præben. lib. 6. iſtud [illegible] fit mentio de ben[illegible] per verba vniuerſalia puta de quocunq. alio beneficio, nam tunc venit penſio. ſequitur [illegible] poſtulaſti. column. 11 verſ. 4. declaratio de reſcr. & in c. de quarto. column [illegible] num. 15. de præſcript. & in terminis dictionis aliquis, quod comprehendat etiam impropria, tradit Corn. in conſil. 41. colum. 2. lib. [illegible] vbi licet ſtatuto appellatione contractus non veniat donatio, quia improprie dicitur contractus, iſtud tamen fallit ſi ſtatutum loquatur vniuerſaliter quod contractus aliquis fieri non poſſit, quia tunc comprehenditur etiam donatio. Idem voluit Curt. iun. in conſ. 121 col. 2 in fin. vbi fortius voluit ſtante tali ſtatuto quod contractus aliquis fieri non poſſit, prohibitam cenſeri etiam heredis inſtitutionem. de quo tamen dubitarem, quia heredis inſtitutio etiam improprie non videtur venire appellatione contractus. Alibi ſcribit Corn. in conſ. 66. col. pen. lib. 3. quod vbi Papa reſeruat omnia beneficia in curia vacantia veniunt omnia beneficia etiam impropria, puta commendæ & præſtitoriæ. Similiter licet † donatio cauſa mortis improprie dicatur vltima voluntas, tamen vbi clauſula codicillaris concipitur verbis vniuerſalibus, puta voluit v[illegible] omni meliori modo, &c. tunc venit [illegible] donatio cauſa mo[illegible], 5

[illegible]

[illegible] qux Re[illegible] enses [illegible] que [illegible] n istas [illegible] rerum [illegible] & quocunq; nomine [illegible] quàm pro [illegible] reb[illegible] u fin bus Renel[illegible] post [illegible] tus [illegible] & taliter q[illegible] amplissima videntur verba fr[illegible] noluerunt tenere Renellentes ad aliqua onera [illegible] alia, ne[illegible] personalia, ne que mixta, dum sibi cautum & pro[illegible] rum per ista verba vniue[illegible] prægnantia & amplissima [illegible] tantum quod licet in specie di[illegible] de onere fo[illegible] & hospitandi, tamen illud omni [illegible] inclusum legitur sub illis verbis vniuers[illegible] & [illegible] post spe[illegible] onera in specie subi[illegible] vniuersalis, siue in quibuscunq; aliis muneribus consistens & [illegible] nomine appellentur, & tam pro personis quàm [illegible] & [illegible] orum. quæ verba restringi non possunt ad one[illegible] ratione recti sermonis. Ideò videmus quod [illegible] generalia restringantur ad specificata. *l. si de certa. C. de* [illegible] *l. si ex maiore. C. de excus.* secus tamen est in verbis vniuersa[illegible] *emptor. § Lucius.* vbi gloss. & Doctor. *ff. de pactis* Bart. & Doctor *in leg. si de certa. C.* [illegible] *l. si ex maiore.* Paul. de Castr. *in consil.* 3[illegible] [illegible] Calcan *in consil.* [illegible] & alibi sæpe Doctor. Amplius verba vniuers[illegible] trahuntur et iam ad non cogitata, quia licet dicantur non cogitata in spe[illegible] in genere tamen dicuntur cogitata. *leg.* [illegible] *frater. Digest. de pactis.* vbi quitatio vniuersalis trahitur etiam ad occul[illegible] de quibus cogitatum non est, & licet ibi [illegible] ut mentis [illegible] quod [illegible] cultata per replicationem doli [illegible] dolus inte uenit [illegible]

[illegible] protectuntur. *l. plenum. § aquæ* [illegible] *l. quibus diebus. § damnum* [illegible] *demonstr.* verba enim [illegible] *pater. de test. lib. 6.* sed [illegible] & c[illegible] nimum & subd[illegible] & super liber[illegible] superiores sole[illegible] grauare subditos oner[illegible] tecendo, q[illegible] ncantur ad on[illegible] quod sent[illegible] contrahentes de on[illegible] qualitate[illegible] & subd[illegible]. ¶ O[illegible] bent adipium disponen[illegible] m, nun[illegible] beat alienar[illegible] de familia est[illegible] & Doctor *in l. peto. § frater ff. de leg. 2.* [illegible] *de fideicommiss.* Idem t[illegible] *in l. filius.* [illegible] *in l. si cognatis. Dig. de rebus dubiis.* Ideo [illegible] nel[illegible] non ten[illegible] ad [illegible] forestaria ipsius Marchionis & sic [illegible] ipsius, non de [illegible] ¶ N[illegible] tium intelligi debe[illegible] quod voluerint p[illegible] cessario. Bal[illegible] *Pater plus solum* [illegible] *post med. lib.* [illegible] hospitandum [illegible] aliorum forent[illegible] ad illum ca[illegible] pacti & conuentionis. Ex quibus [illegible] num Renelli plu[illegible] adhuc [illegible] die 14. Aprilis, [illegible] Aymo Cranetta [illegible]

SVMMARIA

Probabi[illegible] [illegible]

CONSILIVM [illegible]

Pro Iacobino Bruneto.

D[illegible]

[illegible]

... præſentare non poteſt ... aut præſentet iudic. vel ... bere ... iberari. *l. miles agrum.* ... peri ... extadicit Paul. de Ca- ſtr. ... *l. propo.* ... *non poſſ.* vbi ſi pater accuſet aut præſ... talis maieſtatis, non debet ſi- lius ... & ... Paul. ... Imperator viſo dicto §. deſertore fil... ito crimine & cum in exilium ſolum mitt. ... dictum refert & ſequitur Fel. *in cap. accuſa-* ... *l. ... uſat.* Auguſt. *in addi. ad Angel. maleſic. in verbo, & ad que-* ... *m.* ... *libar. 32. ſecundum variam impreſſionem.* Mat. in *l. 1. § ad qu... num. 31 ... de quaeſt. & alibi ſæpè.* itaque ſi non puni ... us banniti ſi præſentatus iuſtitiæ per patrẽ, & ſic in recce- pta ... e pat ... ceſſat ... tio ob quam puniuntur receptatores, ... eſſare debet le ... diſpo ... io. *l. adigere. § quamuis. ff. de* ... *quæ. non ceſſante. de appella.* Si ... vi ... mus quod ceſ- ſante cau ... interdi ... ecc'eſiaſtici ceſſat ... ſum interdictum, *iux- ta ... clemen. 1. § terra. de pœnis.* Hieron ... m. ... ortus *in conſilio ſuo quod* ... *nſil. Anton. de Butr.* ... *mn. 5.* & in prohibitione tradit Oldr. *in ... ilio 108. Titius veniens ad mortem. colum. ſecun. ... circa medium.* vbi qu... n ... e eſt ... cau prohibitionis ceſſat prohibitio. Itaque ... n ... c ... tus prohibiti ... is receptandi bannitos in p... b ... nium ... accuſare aut iuſtitiæ præſ ... ntare non

4 ... iſa ... de ... t & prohibitionis pœna ¶ Quarto † banni- ... nicato. *cap. 1 in princip. in titul. hic finitur lex ... regni incipit ...* *in cap. paſtoralis. in gloſſ. fin. de appella.* ... *8. ... olumn. 2. in fin. lib. 2.* ſed patet prohibetur com- ... at & par ... icipa e cum filio excoi ... municato. *cap. quoniam multos. 11. quæſt. 3. cap. inter alia. de ſent. excommunic.* ergo eadem ratio- ne nõ debet pro ... iberi pater qu ... minus pat ... pet & commu-

5 nicet cum fil ... is bannitis. ¶ Quintò † prohibitio tollẽs com- municationem & participationem inter patrem & filium dici- tur contra ius naturale. *l. amiciſſimos. in fin. ff. de excuſ. tutor. l. quæ cum vno § fin. ff. de re milit.* ſed non valet lex contra rationem natura- lem. *§ pen. inſtit. de iure natur. gent. & ciuilis. erit autem lex. 4. diſt.* ergo non eſt dicendum quod ſub illa prohibitione generali de non recep ... do bannitos comprehendatur perſona patris. *leg. quæ ad certum. ff. locati. cum inſiuitis ſimilibus.* ¶ Sexto pœna receptationis non ligat receptantem coacte. Bald. *in l. in delictis ff. de noxa.* Socin. *conſil. 62. colum. fin. verſicul. præterea & tertia. lib.* ſed patet debi- ... non poteſt prohibere ... ios plures numero & robuſtiores ... minus in domo bibant & comedant, ergo, &c. ¶ Circa ... uati & auxiliũ ex teſtibus partis fiſcalis probatur quod ... us auxilium nullum præſtitit, cum eſſet inermis cum ... r ... appa clamans aggredientibus ne ad eum acce- ... auxilium ad homicidium conſideratum non po-

[illegible]

... *in conſil.* ... Sec ... *in conſil.* ... um ... Decius *in d. ... l. 439. in* ... *fil. 78* ... occid ... ciali ... modo ... Dominicum quæ dicitur occidiſ ... neque occiſum. Itaque dici non poteſt quod voluerit ... xiliari Dominico quem non ... bat nec ſciebat vbi e ... t ...

7 circa † ignorata animus trahi non poteſt *l. mater decedens ... de in- offic. teſtamen. cum ſimil.* & in terminis ad ... ddit ... *ob hæc verba. ante fin. ff. de infamibus.* vbi quod ope ... ſtat armatus cum alio ita prope quod ... poteſt ... ibi auxiliari ſecus ſi remotius, allegat Innocent. *in capitul. commentatam. de ... perc. quod eſt in cap. fin.* quod dictum refert & ſequitur Iaſon *in con. ... col. fin. lib. 1* ¶ Sextò vbi res dubia eſſet, quam ipſam ex pr... ... lariſſimam putamus, in dubio pronunciandum eſt contra fi- ſcum *l. non puto. ff. de iure fiſci. reg. fauorabiliores. ff. de regul. iuris.* Sau... m. 22 Aprilis. 1 ... 47. Aymo Crauetta a Sauiliano Iuri... conſ... ltus.

¶ Circa ortum ſolis dicti memorati 22. Aprilis. 1 ... . viſus eſt ſol maior ſolito renitere aut aſſidue moue ... ſine ſplendore ha- bens barras tres tranſuerſas & ... ſas nigras, cuius ad terram veluti ſanguinem reddebant in ... per radio ... os tin- gebantur. Similiter die 1 ... eiuſdem A ... lis viſus eſt ... in ortu ſuo in forma ampliſſima & valde rub... inſtar flamma. Prod... gia etiam ... ol dedit die 23. ei ... em menſ... Apri ... & ſequentib. nam videbatur emittere quoſdam orbiculos diuerſorum co- lorum & ſanguineos in quibus videbatur certare ... los iaculari inſtar bombardæ bellicæ. Similes orbiculi apparebant circum circa montes ab omnibus lateribus.

SVMMARIA.

1 *Seipſum nemo recompenſare poteſt*
2 *D... videlicet eſt declaratiua præcedentium.*
3 *Ex quantitate pretij arguitur an aliquid ... in venditione, vel non.*

CONSILIVM CCCX.

Pro nobili Bernardino de Brayda ex loco Cumen ... contra nobiles Antonium & Franciſcum eius fratres.

DIVINO ſuſſidio ex ... poſtulato. Verba pa... di- ... tionis bo... m co... nter Antoniu... Fran- ciſcu... n, & Bernardi... um Br... dæ ... at ..., ita habent & ... conue- nerunt ipſi ... atres q... d de p... & maiori ſumma præd... m

qu...

[illegible] & [illegible] iſtud [illegible], [illegible] Bart. ff. de hered. in- [illegible] bis non obſcure vi- [illegible] debeant date [illegible] ctionibus eorum [illegible] ſi darent de bonis [illegible] pro parte tantū, [illegible] ¶ Tert ò ſi velimus [illegible] declaratiue, ſed [illegible] de naturalibus [illegible] idem & multo fortius: nam [illegible] traderentur [illegible] ndum iſtud dubium partes limi- [illegible] & teſti [illegible] pactum quod non inte- gere- [illegible] bon [illegible] ed quod quilibet ipſorum fra- [illegible] Anton [illegible] quinque [illegible] ¶ [illegible] mihi [illegible] non [illegible]

[illegible] fratre, [illegible] nus valent. Sum [illegible] illam [illegible] Crauetta. [illegible]

S V M M A R I [illegible]

1 *In legatis ſeriò pos* [illegible]
2 *ſint pœna* [illegible]

CONSILIVM CC[illegible]

Pro Antonio Palanchi de Arpeaſco [illegible] *filium Magdalena Palancha.*

D[illegible] quondam N[illegible] Palan[illegible] S[illegible] Bertramo Bert[illegible] exeq[illegible] quod [illegible] non tacet [illegible] fra ſex menſes poſt dec[illegible] ipſius teſt[illegible] reuocauit, [illegible] relinquendo Anton[illegible] mortuus eſt [illegible] in vita teſtatri[illegible], quæritur cui legat[illegible] puto quod debeatur legatum [illegible] ſubſtituto caſu quo Bertram[illegible] legatum relictum Bertramo [illegible] teſtatrice, [illegible]

[illegible] Bart. *in d. l. pater Seuerin.* [illegible] non agitur de [illegible] [illegible] dem poſt [illegible] agitur [illegible] alter [illegible] culpa illius [illegible] ſed quando ag[illegible] ſecundum [illegible] que teſtat [illegible] quam [illegible] non venerit ad legatum [illegible] caſu q[illegible] impleret. iſte enim ſecun[illegible] in legato licet fuerit ſub[illegible] in pœnam [illegible] Iaſon *in d. l. 1. num. 23 ff. de vulgar. & d. l. cum propoſitæ* [illegible] *C. de hered. inſtit. dicit in d. l. pater Seuerinam.* non agitur de ſubſtitutione, ſed de translatione legati facta in pœnam, [illegible] Bartol. *in d. l. pater Seuerinam.* dicit quod ibi ſubſtitutio facta fuit in pœnam. Conſtat autem quod ſubſtituto applicari debet legatum quod venit in cauſam caduci, quia ſubſtitutus habet [illegible] voluntatem teſtatoris certam & claram. *d. l. vnic. §. pro ſecundo. & §. ſin autem aliquid ſub conditione. C. de cadu. tollen.* & [illegible] hoc quod not. Bart. *in l. vxorem. §. heres. ff. de l* [illegible] ubi quando [illegible] priuat heredem hereditate ſi moleſtet vxorem in [illegible] factis, nec dicit cui applic[illegible] debeat hereditas, dicit B[illegible] qu[illegible] applicari debet ſubſtituto [illegible] habet aut coheredi. ſequitur Al[illegible] *in conſil. 138 colum. fin. lib. 1.* ¶ Sed dicet aliquis, præ[illegible] procederent ſi Antonius P[illegible] eſſet ſubſtitutus in [illegible] impotentiæ, reſpondeo, quod ſi Antonius Palanc[illegible] expreſſe [illegible] eſſet ſubſtitutus in caſum impotentiæ, non eſſet [illegible] qua determinatione cum [illegible] clara per [illegible]: nam etiam [illegible] caſu Bart. *in d. l. vxorem. §. heres. ff. de leg. 1.* ſubſtitutio non fuerat [illegible] caſu quo heres moleſtaret vxorem, quia tunc fruſtra fuiſſet dubitatum cui applicanda eſſet hereditas, & tamen Bar[illegible] & Doct. di[illegible] quod applicari debet hereditas ſubſtituto ſi [illegible] generaliter loquuntur in omni ſubſtituto quomodocu[illegible] ſubſtitutio facta ſit: ratio, quia in ſubſtituto adeſt voluntas teſtatoris ma[illegible] clara & expreſſa ex quo ſubſtitutus expreſſe vocatus eſt, & eo ceſſante coheres, quæ ratio coheredi [illegible] videtur face[illegible] pro ſecundo legatario. E[x] quibus concludo in fa[uorem] Antonii Palanchi ſ[alu]o ſaniori iudicio. Sa[illegible] die 2. Maii 1547. Aymu Cranetta à Sauiliano iuriſconſultus.

S V M M A R I A.

1 *Patientia de alterius poſſeſſione quando præiudicet.*

2 *Qui bona fide [illegible] non tenetur reſtituere fructus perceptos, quia triennio præſcribuntur.*

3 *Inuentarium factum reſpectu unius perſonæ, non trahitur ad aliam perſonam ſeparatam.*

4 *Aditio hereditatis debet eſſe pura.*

5 *Ius legitimo tranſmittitur etiam ad heredes extraneos.*

CONSILIVM CCCXII.

Pro magnificis dominis Aymone & Bonifacio ex Comitib. Ploz[aſchi] [illegible] & dominis Scalengiarum & Caſtagnolarum, contra magnificum Comitem Fruzaſchi.

D[IVI]NO ſubſidio ex corde poſtulato. De pluribus quæri[tur] in hac cauſa magnificorum dominorum Aymonis & [Bonif]acii ex Comitibus Plozaſchi & dominis Scalengiarum [illegible]

[illegible] ¶ B[illegible] [illegible] ſufficie[illegible] tum ſcientibus [illegible] præiud[illegible] not. per Iaſ. & D. [illegible] *C. de* [illegible] [illegible] temporis, tam in [illegible] igendi [illegible] hereditati. Alex. *in con*[illegible] ¶ N[illegible] tur qu[illegible] domin[illegible] mala fide, qu[illegible] mala fide [illegible] cont[illegible] probetur di[illegible] hereditatem [illegible] & [illegible] bona poſſideri per fratrem. [illegible] not. S[illegible] *in conſil.* [illegible] *verſ. verſ. intro dominam* [illegible] *column. 4.* [illegible] *lib. 1.* ubi ratione [illegible] ante aditionem [illegible] nem non [illegible] qui [illegible] pertinere ad [he]redem ante aditam hereditatem. & id [illegible] bat Socin. duabus aliis rationibus de quibus [illegible] etiam pro h[illegible] in terminis adducit [illegible] Anchar. *in c.* [illegible] *ſine poſſeſſione. colum. 18. de reg. iuris lib. 6.* ¶ Secundo conſidero quod ſi ſoror Ioannis habuiſſet aliquod negotium cum fratre, p[illegible] rationes aliquas ſæpius calculaſſent ex cauſa dotium ipſius ſororis aut aliter, in qua calculatione nihil vnquam di[illegible] eſſet de iuribus ſororis in hereditate paterna: ex hoc cen[illegible] ſororem remiſiſſe iura ſibi competentia in hereditate patris. *l. Procula. Digeſt. de probat.* ubi Bartol. not. gloſ. [illegible] *in l. liberis quo*[illegible] *ff.* [illegible] *leg.* Roman. *in conſil. 517. column. 4. ante medium verſi. præterea dum quæritur.* Alex. *in conſil. 56. in fin. lib. 4.* ¶ Tertio conſidero quod pr[illegible] miſſis ceſſantibus, id eſt, quod dominus [Io]annes nun[quam] p[illegible] diſſet totam hereditatem domini Antonii [illegible] p[illegible] ginta annos, & [illegible] per tempus ſufficiens ad præ[illegible] adeundi aut immiſcendi, tamen fructus [illegible] p[illegible] nere[illegible] re[ſti]tuere, quia fructus præſcribuntur [trie]nnio. *leg. ſequitur. §. fructus.* ubi Bart. [illegible] *de vſucap.* Bald. *in l.* [illegible] *colum. 2. Cod. de vſur. & fruct. leg.* Curtius iunior *in conſil.* [illegible] *colum. 4. circa med. & column. 10 circa med.* Iaſ. *in* [illegible] *& Titium. column. 2. ante med. ff.* [illegible] *pet. in l.* [illegible] *Neratius in 3. not. ff. de acquir. poſſ. & in conſil.* [illegible] *colum. 2. poſt med. lib.* [illegible] ¶ Nec obſtat quod fructus non potuerunt præſcribi cum mala fide domini Ioannis, quia dic[o] quod ante aditam hereditatem per ſororem non poteſt conſi[derari] mala fides, cum bona ad ſororem non pertinent ante aditionem, vt ſupra probatum eſt. Amplius dico quod ſi ſoror adiuiſſet hereditatem patris & fructus fuiſſent communiter conſumpti ad communem victum [illegible] non poſſent, [illegible] quo[illegible] expenſa [illegible] gnam expenſa [illegible], vt quia dominus Ioan. [illegible] familiam Bal[illegible] *in l. fin. C. de coll.* Angel. *in l. duob.* [illegible] *Digeſt. de negot. geſtis.* Anchar. *in conſil.* [illegible] *Materia de q* [illegible] *in fin.* Roman. *in conſil. 172. in vlt. dubio.* Alex. *in conſil. 49. colum.* [illegible] *probatur lib. 1.* So[illegible] *conſil.* [illegible] *in conſil.* [illegible] *6. colum. penult.* [illegible] alibi ſæpè Doct. ¶ Et poſito conſumpti non eſſent [illegible] communem victum, tamen [ſ]oror aduiſſet he[re]d[itatem] [illegible]

[illegible] Itaq. [illegible] pectu vnius perſonæ in [illegible] ſeparati [illegible], cuius quis eſt heres im[illegible] & de per ſe, quia [illegible] nolu [illegible] non [illegible] gemmatur. *l.* [illegible] *§ iulian. ff. de tenore aliqui, et cat.* Ideo [illegible] propter [illegible] creditorum [illegible] omnes creditores bona latitantis poſſidere aut ea vendi [illegible] poſſint, [illegible] tantum creditor, cuius cauſa debitor [illegible], licet verum ſit debitorem latitare, quia animus latitantis inſpicitur, & cum [illegible] latitet reſpectu [illegible] creditoris, [illegible] voluntas ad al[illegible] non debet. *l. Fulcinius. § quod ſi aduerſus. & §. denique ff. quibus ex cauſ. in poſſeſſ. eatur.* Similiter ſi quis adeat hereditatem ab inteſtato, cum eſſet heres ex teſtamento non fit ex tali aditione, quia voluntas eius fuit limitata ad cauſam inteſtati, ideo non trahitur ad aliam cauſam, & econtra ſi quis adeat ex teſtam. cum [illegible] heres ab inteſtato, quia voluntas adeuntis inſpicitur & reſtringitur ad cauſam ex qua adit. *l. ſi is ad quem. ff. de acquir. hered.* Ad[illegible] in voluntas limitata non extendatur vltra ſuos limites, eſt tex. *in l. fin.* [illegible] *ne vxor pro marit. in l. voluntarie. Codic. de excuſat. tutor. in l. tutor. Cod. de nego. ge. [illegible] in l. tutores. Cod. de adminiſtr. tutor. & in l. ſi ſeruus non poſitus. Digeſt. de [illegible] liber.* Itaque cum ſeparauerit dominus Fruzaſc[illegible] hereditatem filii ab hereditate patris, & filii quidem adierit hereditatem cum beneficio inuentarii, hereditatem autem Ioannis patris ſimpliciter adierit ex alia cauſa, quam teſtamento, non [illegible] quam heres heredis, talis voluntas inſpici debet, nec animus facientis inuentarium de hereditate vnius extendi debet ad hereditatem alterius, quæ venit diuerſo & ſeparato iure, quia [illegible] ſeparata eſt ratio. *leg. fin. Digeſt. de calumnia. leg. Papinianus exule. Digeſt. de minor. l. pro fundum. § ſi ſimilius. Digeſt. pro emptor.* [illegible] *Digeſt. de verbor. obligat.* [illegible] *de præbend. libr. 6.* [illegible] Iſta eſt conſideratio noua in hac materia quoad me, ideo eam ſubiicio iudicio & determinationi meliu[illegible] ſentien[illegible]. ¶ Quint[illegible] conſidero quod dominus Fruzaſchi prætendit dominam Bernardinam eius matrem ſucceſſiſſe fratri eius domino Ioann. Francisco ac ſorori Yolant, ſed nõ probatur quod domina Bernardina adierit hereditatem tranſuectaſſium, aditio enim cum ſit quid [illegible] non præſumitur niſi p[illegible] *l.* [illegible] *Dig.* [illegible]

[illegible]

[illegible] pro legitima aut [illegible] dominum Fruzaſc[illegible] tori [illegible] in cuius bonis legitima deb[illegible] parte domini Fruzaſch[illegible], agi [illegible] in ſolidum cum non poſſideat omni[illegible] tima dicatur quota bonorum. ¶ Sed præ[illegible] contrarium ſine dubio aliquo eſt de iure [illegible] poſſit ad legitimam contra ſolum he[illegible] antur etiam per alios puta legatarios [illegible] ſupplemento competunt [illegible] actione [illegible] ex teſtam. & petitio hereditatis, quod compe[illegible] lege, eſt tex. *in l. [illegible] & in l. omni modo C. de inoff.* [illegible] *l. pater plenius. colum.* [illegible] *ff. eod. tit.* & iſta con[illegible] petit contra heredẽ, quia dicitur actio per[illegible] nis not. Paul. de Caſt. *in conſ. 104. Super 1. dub. lib.* [illegible] *libr. 2.* ¶ Quod competat actio ex teſtamento p[illegible] eius ſupplemento, tradit Bald. *in l.* [illegible] *inoffic. te ſam.* clarum eſt autem quod actio ex teſtam[illegible] perſonalis & competit contra ſolum here[illegible] obligatum. ¶ Quod competat petit. o hered[illegible] aut eius ſupplemento, not. Bald. *in* [illegible] *in l. ſi quis filium.* [illegible] *med. verſic.* [illegible] Curtius ſenior *in conſ.* [illegible] *colum. 4. in fin.* [illegible] *lib. 1. in conſ. 190. in fin.* [illegible] *lib. 2.* [illegible] *lum. 5. in 2. dub. lib. 4.* & iſto caſu adhuc ag[illegible] lum heredem, immo [illegible] ageret contr[illegible] poſſeſſores ad legitimam rep[illegible] eligi non poteſt in bonis poſſ[illegible] per tertios e ſeni de melioribus, vt [illegible] D[illegible] *in conſil.* [illegible] *poſt Alexand. & alios in l. in quartam ff.* [illegible] *pl. 12.* & Alexand. *in conſil. 12. lib.* [illegible] *in conſ.* [illegible] *& in conſil. 10.* [illegible] *4.* [illegible] *ff. de leg. 1.* ¶ Ex quibus [illegible] lum heredem de quo non e[illegible] ad legitimam immo dubium [illegible]

[illegible]

[illegible]

[illegible] Nec poteſt pars opponere in fraudem [illegible] quod talis [illegible] non poterit, cum pars non intereſt, ſed illud poſſent opponere legatarii aut alii [illegible] prætendentes [illegible] teſtamentum, ad tamen ſe heredem aut ab inteſtato. ¶ Audiri igitur pars non debet [illegible] non intereſt *l. prætor [illegible] §. fin. l. qui bona [illegible] ff. de damn. infect. [illegible] c. cum inter prima de elect. cum ſimil.* [illegible] tio, tua non intereſt, impedit [illegible] ingreſſum. Bart. & [illegible] *in l. poſthumus. §. ſi quis ex his. ff. de inoffi. teſta.* ¶ [illegible] bitur, nam pars opponit quod domina Bernardina mater domini Antonii approbavit teſtamentum filii, an ex tali approbatione [illegible] de ea cunctare poſſet, ipſa mater ſibi præiudi[illegible] in iure legitimæ. Pars contendit quod ſic & contrarium [illegible] verius, quia ut præiudicium fiat in legitima, [illegible] ur expreſſ. & ſpecialis renunciatio, quod promittat [illegible] non petere etiam ratione legitimæ: generali [illegible] approbatio teſtamenti non [illegible] ad ius legitimæ, *l. ſi quando. §. generaliter. C. de inoffi. teſtam.* & in terminis approbationis teſtamenti quod non noceat [illegible] legitima, tradit Anch. *in conſ. 162. plura ſunt [illegible] colum. 2. verſ. [illegible]* [illegible] *in conſ. 81. colum. 1 in conſ. 218 colu. 2. & alibi ſæpe.* ¶ [illegible] dubio, an aſcendentes ſuccedant in bonis feudalibus [illegible] patria Sabaudiæ, quia conſuetudo eſt [illegible] ¶ Ex præmiſſis puto diſſolutas difficultates quæ [illegible] adverſus intentionem dominarum agentium, in quorum favorem ita de iure reſcribendum putavi. ſalvo ſemper ſaniori iudicio. Savilliani 13. Maii 1547. Aymo Cravetta a Savilliano. I. V. D.

SVMMARIA.

1. *Allegans ſolutionem tenetur eam probare.*
2. *Qualitas adiecta verbo debet adeſſe [illegible] tempus verbi.*
3. *[illegible] & præſumentes non ſit [illegible] expre[illegible].*
4. *[illegible] actibus difformibus & variis non [illegible] conſuetudo induci.*
5. *Conditio debet impleri in forma ſpecifica.*

CONSILIVM CCCXIII.

Pro communitate Cabellani maioris, contra Illuſtriſſ. dominum Philippum de Sabaudia, dominum & Comitem Ra[illegible] conſilium ſubtile & utiliſſimum ſuper intellectu l. quicunque. C. de apochis publ. lib. 10.

DIVINO ſubſidio ex corde poſtulato. Debitor cenſus annui [illegible] pellatur ad ſolutiones præteriti temporis: fit ſi-

[illegible] annorum, & [illegible] continuo [illegible]

[illegible] *l. quicunque.* [illegible]

[illegible] *l. quicunque.* [illegible] tur exor[illegible] munus [illegible] eam probat *l. [illegible] ff. de prob.* [illegible] *Tenor colum.* [illegible] 5. probatio autem [illegible] *l. non hoc. C. unde legit.* [illegible] Doctore *de prob.* [illegible] non [illegible] ſi quis ſibi [illegible] proximis & continuis ergo ſolvit ſemper [illegible] præteritum [illegible] terminum [illegible] debeat [illegible] conclu[illegible] probari, tradit Bald. *in con[illegible] 20. Proponitur quod A libro 1.* [illegible] ponunt quod creditor dicat debitori ſum contentus, ex his verbis non probatur de neceſſitate [illegible] quia iſta verba [illegible] ſunt referri ad animum, id eſt [illegible] aut contentus ſum. Similiter ſi creditor in ducentum dicat debitori de [illegible] te centum habere, non [illegible] ex hoc, quod alia centum fuerint ſoluta, & quod ſit creditor in centum tantum, [illegible] tatur creditor verbis taxativis, quod centum tantum ſibi debeantur. Bart. *in l. ſi cum dos. ff. ſoluto matrimonio. & in l. ſi quidem. C. de transact.* Alex *in conſil. 14. col.* [illegible] *med. lib. 2.* Hoc [illegible] præſuppoſito, quod diſpoſitio *d. l. quicunque.* dicatur exorbitans & multum [illegible] tiua, dico quod verificari debet qualitas requiſita per ipſam legem, quia qui ſe fundat in iure exorbitanti, debet probare omnia quæ continentur in ipſo iure *gl. in clem. ſi. de re[illegible]* Doct. *in l. ſi quis maior. C. de transact.* Corn. *in conſ. 165. col. [illegible] lib. 3. in conſil. 50. colum. 1. in conſil. 65. colum. 1 in fine. & in conſil. 52 colum. [illegible] lib. 4.* & dicit Bal. *in conſil. 403. Quod non ſit ſufficienter. ant. [illegible] finem. libr. 5.* quod quotieſcunque recedi[illegible] iure communi per ſtatutũ in alicuius caſu exiſtentia, ad hoc ut ſtatutum deroget iuri communi, [illegible] exiſtentia illius caſus, nec talis [illegible] præſumitur. [illegible] *in conſil. 163. Conſtitutum.* quod volens gaudere beneficio, *auth. hoc beneficio. C. de ſolut. [illegible]* tenetur probare omnia in ea requiſita, quia illa diſpoſitio eſt exorbitans, extra regulas iuris communis. Imo etiam ceſſante exorbitantia, regula eſt quod fundans ſe in aliqua lege aut ſtatuto, debet probare omnes eius qualitates. *l. 1. §. [illegible] ff. ne quid in flum. publ.* Ideo fundans ſe in iure novo tenetur probare qualitates ipſius iuris novi. Cor[illegible] *in conſil. 1[illegible] 5. colum. fin. libro 3.* S[illegible] fundans ſe ſuper conſuetudine debet probare omnes [illegible] qualitates. Soc. *in conſ. [illegible] lib. 4* [illegible] illa lex quicunq., requi[illegible] quis teferat apochas de ſolutionibus [illegible] annorũ [illegible] tium ſibi gl. in verbo, [illegible] exponit, id eſt, præſe[illegible] ic vult text. iuncta gl. quod illa [illegible] ſeu cohærentia [illegible] annorum ſit præſens, ergo non [illegible] cohærentia aut [illegible] ctio trium annorum in præteritum [illegible] legendo gl. in [illegible] bi, prout habeo in libro meo, [illegible] gendo prout [illegible] de Penna, & quidem melius & [illegible] nantius, res [illegible] no paulo clarius: nam Lucas de Penna legit, ſibi, id [illegible] con-

 nenſi-

uentioni,ſe [illegible] anni c[illegible] &[illegible], præſenti tempori [illegible] eſſe ſi probaret teuſ [illegible] aut coh[illegible]entibus in medio tem[illegible] ſolenti coh[illegible] annorum c[illegible] [illegible]uentionis in iudicium. Sed illud clariu[illegible] volu[illegible] *in verbo, annorum.* dum exponit proxim[illegible] [illegible] anni præ[illegible] der tia v[illegible]

6 ci[illegible] q; con[illegible], aut [illegible], [illegible] es an[illegible] cu[illegible] [illegible] tr[illegible]cedunt *proximus [illegible] de ve[illegible] m.* idem e[illegible] [illegible] annorum [illegible] unquod m[illegible] [illegible]enna *in d l. quicunq. ſuper gl. in verſ. annorum.* [illegible] l.[illegible] ci proximorum [illegible] Luc[illegible] & vltimo [illegible]m. Itaq; [illegible] dio in[illegible] ſolutiones trium an[illegible] uru in cohærentium, con[illegible] commun[illegible] continuctorum, tal[illegible] tamen ſolutiones [illegible] habent illam efficaciam vt ex ei præſumatur teri[illegible] ſuturum, quia illæ efficaciam tribuit [illegible] tri[illegible] annorum vltimorum & cohærentium, non q[illegible] [illegible]unt. Studi[illegible] m qu[illegible] intelligatur tex. de trib. anni[illegible] [illegible] Alex. *in conſ.* [illegible] *col. t. in ſu. lib* 3. Cremenſ. *not.* [illegible] *tertius annus verſic.*

2 *adde ſimiliter. C. de pact* & pro[illegible] quod [illegible] qualitas adiecta v[illegible] d[illegible]bet ad[illegible] [illegible]um tempus verbi *l. inde[illegible] ltis. §. ſi ex ter. ancus. ff. de noxa. [illegible] ſimil* [illegible] text. *in d. l. quicunq.* facit m[illegible] de tribus [illegible], debent intelligi de cohærentia quæ [illegible] ſibi, id eſt, de tempore qu[illegible] diſp[illegible] ſolutionib & cum verba text. [illegible] l. [illegible] non [illegible] us vid[illegible] dubitandu[illegible] *aut ille § [illegible] in verbu. ff.* [illegible] ¶ V[illegible] [illegible] conſiſt[illegible] ſpondendo ad contra[illegible] quo [illegible] ne[illegible] [illegible] ſima, n[illegible] clu[illegible] ue non [illegible] [illegible] poſitio *d. l. quicunque* generaliter loquitur, quia negatur, [illegible] ſpecialiter & conditionaliter ſi profe[illegible] ntur quitatione aut apochæ trium annorum cohærentium ſibi: quæ verba intelli[illegible] de tribus anni[illegible] proximis & vl[illegible] cohærentib. de tempore conteſtationis, quo res in iudicium aut in d[illegible]tationem deducitur, ſecundum gloſ. & Doct. vbi [illegible] pra. ¶ Non obſtat quod eadem videtur ra[illegible] in tribus anni[illegible] [illegible]ermedi[illegible]s, vt abinde tetro præſumatur ſolutum quæ in tribus annis [illegible] & immediate præcedentibus quis negatur, imo diuerſa eſt ratio. ¶ Primo quia in vltimis annis eſt maior difficultas probandi ſolutione[illegible] tutius præteriti temporis, propter longio[illegible] antiquitatem & maiorem temporis curſum [illegible] tam in annis intermediis. Ideo non ſequitur, voluit ſubuenire debit[illegible] [illegible] maioris difficulta[illegible] & neceſſi[illegible], e[illegible] et in caſu facilioris probationis, & in quo neceſſita[illegible] [illegible] ſta nõ [illegible]at. ¶ Secundo diuerſi[illegible] rationis ſumitur arguendo [illegible] communiter accidentibus: nam tr[illegible] debiti annuis [illegible] ſolent creditores experi[illegible] in iudicio, niſi p[illegible] [illegible] ceſſationem debitorum in ſoluendo, & in patria [illegible] us, vbi frequen[illegible]iſſimus eſt mos annuorum cenſuum, fere petunt creditores præteriti temporis ſolut[illegible]nes, quæ ipſa [illegible] [illegible], per tempus annorum 29. ob id vſum fuit legi[illegible] od[illegible] de temp[illegible] iudicii oſtendātur [illegible] trium [illegible] cohærentium & immediate præced[illegible] præſumptio [illegible] debitore quod retro ſemper ſo[illegible] [illegible] probet [illegible] quod ſolutum non fuerit ſed ratio iſta ſic præſ[illegible] non [illegible] in trib. annis intermediis [illegible] petitionem iudicialem, cum ſo[illegible] creditores d[illegible] tace[illegible] quod in trib. annis maxime valoris non ſta magni. Itaq; non ſequitur [illegible] præ[illegible] lex pro debitore quod retro ſolueni probant [illegible] ſolutionem trium annorum vlti[illegible]orũ [illegible] cr[illegible]ditor [illegible] annuum petit, ergo etiam præſumi debet in tribus an[illegible] intermediis antequam creditor peteret cum [illegible] maio[illegible] præſumendum [illegible] tempore quo [illegible] , quam in[illegible] [illegible] non ſit petitum [illegible] ¶ [illegible] & etia d[illegible] [illegible] quand[illegible] [illegible] in iudici[illegible] & deb[illegible] tribus [illegible] n [illegible] [illegible] no[illegible] appa[illegible] [illegible] no[illegible] dixe[illegible] [illegible] edit[illegible] ſolui[illegible] [illegible] obl[illegible] [illegible] credit[illegible] [illegible] tionem [illegible] ſtatim vocand[illegible] [illegible] iudici[illegible] [illegible] plum [illegible] multo minus [illegible] præt[illegible] [illegible]endo de præt[illegible] ad [illegible] *ff.* [illegible] ratio [illegible] [illegible] [illegible]bus. quando non [illegible] debitorem in ius vocauerit, qua voca-

tione ad iud[illegible] [illegible] an[illegible] [illegible] [illegible] ex[illegible] [illegible] ¶ [illegible] poſito & [illegible] triennii [illegible] [illegible] tan[illegible] *contra [illegible] vero.* [illegible] *populu[illegible]* [illegible] *ad Tr[illegible]* [illegible] *quæcunque.* præſumptio [illegible] ſolutionibus [illegible] annorum cohær[illegible] præſum[illegible] non [illegible] extenſ[illegible] pre[illegible] *bo, partibus. in [illegible] finem. de verbor. ſignifi[illegible]. Pa[illegible] ff. de [illegible] nom. iudic. & m[illegible]* 34. [illegible] *lib. 1. cum ſimil.* ¶ Q[illegible] *in dict. l.* [illegible] eſt, [illegible] præſumptione, præ[illegible] tertium quando probatur ſo[illegible] bu[illegible] proximis, ſed vna præſumptio[illegible] *ff. de ritu nuptiarum l. [illegible] ff. de in integr. reſtit. quam l. cum [illegible] ætate. ff. de probation. l. ſi is qui. C.* [illegible] *ſcript. cap. accedens. de falſis.* modo ſi ex [illegible] rum intermediorum velis præſumere ad [illegible] tempor[illegible], reſpondetur quod ex po[illegible] uendo ita potuit ceſſare in præteritum an[illegible] trium ann[illegible] intermediorum, ſi [illegible] tiones trium tan[illegible]um. quia ex præſenti [illegible] *l. non eſt neceſſe ff. de probat. & d. l. quicunque. C. [illegible] apoch* ſicut ex præſenti arguitur ſolutum [illegible] præſenti reperiuntur ſolutiones [illegible] *quicunque.* ita per contrarium quando [illegible] vltimo triennio & continuo præſumi [illegible] ritium ſemper ſolutum non fuiſſe, lic[illegible] ſolutiones trium annorum [illegible]hærentium. [illegible] non operantur ad inducendum præſumpt[illegible] poſtquam apparet de alia præſumption[illegible] poſtea non ſemper ſolui[illegible] nam [illegible] d[illegible] ſolutionibus poſt illas ſolutiones [illegible] defec[illegible] [illegible] ſoluti[illegible]nes *l. [illegible] re multar.* ¶ Quinto difformitas actu[illegible] Ide[illegible] exact[illegible] difformibus & va[illegible] do induci. Bartolu[illegible] *in l. 1 [illegible] ff.* [illegible] *§ non vero. columna 1. ff. de off. procon.* [illegible] quod *vrbe pred.* Decius in *l. ſi certis annis. columna* [illegible] *de pac[illegible] 25. columna 2 verſicul. hoc idem probatur.* [illegible] debitorem aliquando ſ[illegible]lle & aliquando [illegible] quod ſit loc[illegible] diſpoſitioni *d. l. quicunq. C.* [illegible] quod [illegible] ſolutionibu[illegible] vnius tter[illegible] tum in præteritum [illegible] tempore [illegible] appareat quod poſt ill[illegible] triennium [illegible] d[illegible] [illegible]itas tempor[illegible] & actuum, qui [illegible] q[illegible]ndo non, ſtante autem d[illegible]formitat[illegible] & in terminis præſumptionis [illegible] q[illegible] non [illegible] difformibus, notant Iac. de Ar[illegible]. C[illegible] *gl. in c. per tuas. de cond. appo.* Calca. *conſ.* 12 [illegible] ſidero vnum fundamentum iud. me[illegible] tum in ratione iuris & æquitate [illegible] nam [illegible] tex. *d. l. quicunq. C. de apoch. pub.* conti[illegible] ex debent omnes qualitates in eo [illegible] equ[illegible] [illegible] condition[illegible] debit[illegible] ant ſecur[illegible] tes trium annorum [illegible] proferat al[illegible] apo[illegible] rum cohæ[illegible] [illegible], ſed poſita [illegible] obl[illegible] [illegible] tibus non [illegible] [illegible] exoth[illegible] anti [illegible] extenſ[illegible] ex [illegible] ſe [illegible] dem[illegible] [illegible] bu[illegible] [illegible] plu[illegible] na[illegible] ſum & volun[illegible] [illegible] & communis. [illegible]

acto non ante acto tempore ſatisfactum eſſet, *arg. l. cum de indebito ff. de probat.* Sed iſta ratio ceſſat in depoſitis in quibus non ſolum non adeſt conſenſus creditoris, imo diſſenſus expreſſus, ſiunt enim depoſita in caſum recuſationis creditoris. Itaq; recuſante creditore accipere pecuniam oblatam & depoſitam, non poteſt argui aliquis eius conſenſus in præteritum quod tacite videatur confeſſus in præteritum quid ſolutum fuiſſe. ¶ Infertur quod extendere *d. l. quicunq;* loquentem in apochis ad depoſita nihil aliud eſt quam arguere in caſibus omnino diuerſis in facto & ratione, ſunt enim contraria conſenſus, & diſſenſus, quitatio ſeu receptio ſolutionis & recuſatio pecuniæ oblatæ. ¶ Septimo *d. l. quicunq;* loquitur conditionaliter ſi apocha aut
5 ſecuritates præſtentur: conditio † autem debet impleri in forma ſpecifica, *l. quibus her. & l. Mæuius ff. de cond. & demon.* ſed depoſitum non dicitur apocha aut ſecuritas, ideo qui deponit, ſoluere non dicitur. Bartolus *in l. item. §. qui paratus. ff. quib. mod. pig. vel hypot. ſol.* Iaſ. *in conſilio 216 columna 2. in fi. lib. 2.* nec admittitur depoſitum vbi pecuniæ ſolutio eſt in conditione. Gozad. *in conſilio 100. columna pen. poſt med.* ¶ Octauo illa *l. quicunq;* non procedit quando creditor reciperet ſolutiones illorum trium annorum tantum, quia tunc ceſſat præſumptio iuris quod cenſeatur tacite confiteri ſolutum fuiſſe in præteritum: non enim tacite confitetur ſolutum, quando expreſſe declarat quod recipit pecuniam pro illis tribus annis tantum, quia ita dicendo tacite videtur negare de aliis annis: illud voluit gl. *in d. l. quicunq; in verbo, ſecuritates. in fi.* & ibi Lucas de Penna *column. 2. poſt prin.* ¶ Quid hic dicemus vbi creditor non ſolum non quitauit pro ſolutionibus trium annorum, ſed etiam expreſſe pecunias accipere recuſauit, nonne hic ſumus in caſu clariſſimo, quod creditor nihil confeſſus eſt expreſſe nec tacite, imo expreſſe negauit omnia, recuſando ſolutionem: ¶ Nono *d. l. quicunq;* procedit in caſu dubio, ſecus in caſu claro, quando apparet de negatiua, quod ſolutiones præteriti temporis habitæ non eſſent, ita conſtat ille text. in fin. ſed hic apertiſſime probatur negatiua, quia pars aduerſa produxit ſcripturas ſolutionum aut depoſitionum præteriti temporis, in quibus non apparet ſolutum fuiſſe pro omnibus annis, ergo apparet quod non pro omnibus annis ſolutum ſit, quia nulla melior probatio negatiuæ quam per inſpectionem actorum. *l. fi. C. de reb. cred. l. Titia textores.* vbi Iaſo. *in 3. not. ff. de leg. 1. l. iuſtum* vbi Dec. *in 3. not. C. de eden.* ¶ Itaq; tex. *in d. l. quicunq;* procedere poſſet, quando ſolum producerentur tres ſolutiones medii temporis cohærentes & continuæ, ſed quando plures aliæ ſolutiones præteriti temporis producuntur non cohærentes, tunc dicitur apparere de veritate, quod non ſemper ſolutum fuerit in præteritum, & pro hoc quod ſcribit Paul. de Caſt. *in conſ. 81. In cauſa quæ vertitur inter reuerendum patrem col. 3. in fi. lib. 2.* vbi licet præſumatur ſolennitas extrinſeca inſtrumenti propter antiquitatem temporis, illud tamen non procedit quando in inſtrumento enunciantur ſolennitates quæ dicuntur adhibitæ, ex qua enunciatione apparet quod non omnes ſolennitates fuerint obſeruatæ, & ſic magis nocet exprimere ſolennitates adhibitas quam illas omnino tacere *l. expreſſ. 1. §. de reg. iur.* nam vbi tacentur illæ præſumuntur propter antiquitatem temporis, ſed vbi exprimuntur ceſſat præſumptio ... in ... ceſſant coniecturæ, & illud dictum Paul. de Caſt. ... & ſequitur Felin. *in cap. ſicut. col. 15. verſ. ... & vlt. declara. de re iudi.* Dec. *in conſ. 13. col. 1. in conſ. 31. colu. 3. in fi. verſ. ... reſpondetur poteſt. & in c. cap. quoniam contra. col. 20. verſic. ſine. ſiue.* Abb. *de probat.* Iaſ. *in l. 1. col. 5. in § limit. C. qui admitt. & in conſ. 176. colu. pen. lib. 2.* Curt. iun. *in conſi. 130. column. 2. in fine.* Adduco Abb. *in conſi. 61 column. fin. verſic. item antiquitas lib. 1.* Veron. *in conſi. 25. ad fi. 1. dubit.* Alibi ſcribit Bellam. *in conſi. ... column. 10 in prin.* quod licet præſumatur titulus ex tẽpore, cuius initii memoria non exiat in contrarium, iſtud tamen non procedit quando expreſſe produceretur titulus nullus & inualidus. Eodem modo in caſu noſtro ſi ſolum producerentur tres ſolutiones continuæ medii tẽporis, tũc forte poſſet procedere opinio contraria, quod etiam in ſolutionibus medii temporis procedat *d. l. quicunq;* quæ tamen opinio mihi non placet. ¶ Sed vbi cum illis tribus ſolutionibus medii temporis producuntur etiam aliæ ſolutiones vlterioris temporis, ex quibus apparet quod non pro omnibus annis ſolutum ſit, tunc ceſſare debet præſumptio. *d. l. quicunq;* quia ſi in præteritum ad integrum ſolutum eſſet, ita veriſimiliter inuentæ eſſent ſolutiones aliorum annorum, ſicut eorum de quibus facta eſt. Itaq; cautius fuiſſet parti ... ſolum produxiſſet tres ſolutiones continuas medii temporis aliis tacitis & retentis, & dici poteſt parti, producta & expreſſa nocent, quæ non expreſſa non nocerent. *d. l. expreſſa.* quod ipſum vnicum fundamentũ videtur reale, æquum & ſufficiens ad victoriam cauſæ. ¶ Decimo ex præcedentibus & ſequentibus ſumitur declaratio *l. ſi ſeruum plurium. § fin. l. qui filiabus. ff. de leg. 1. l. pen. C. de inſtit. & ſubſtitut.* Sumitur enim declaratio à prioribus & à poſterioribus. Bald. *in l. dominum col. 1 in fin. C. de rei vendit.* Iaſ. *in conſi. 215. col. 2. circa med. lib. 1. & in conſi. 5. colum. 3. in fin. lib. 3.* modo arguendo ex præcedentibus, ante illas tres aut quatuor ſolutiones medii temporis continuas plurimæ apparent ſolutiones non cohærentes neq; continuæ. Similiter arguendo à ſequentibus poſt illas ſolutiones trium aut quatuor annorum multæ etiam apparent ſolutiones non continuæ neq; cohærentes, ergo dicendum eſt quod pro illis tantum annis continue ſolutum fuerit, pro quibus leguntur productæ ſcripturæ ſolutionum, aut depoſitorum ¶ Vndecimo in materia præſumptionum ſemper præſumptio fortior vincit & tollit debiliorem *l. qui autem. § non ſimpliciter.* vbi Ang. *ff. ſi quis omiſſa cauſ. teſtam.* Bald. *in l. ſiue poſſidetis. circa fin. C. de probat.* modo pars aduerſa allegat duas ſolutiones triennales continuas & cohærentes, ſed contra partem adducuntur ſolutiones multo plures non continuæ neq; cohærentes, ergo magis capienda eſt præſumptio à maiori numero ſolutionum non cohærentium quam à modico numero cohærentium ſolutionum, ſicut videmus in vera probatione teſtium quod cæteris paribus præferuntur teſtes numero plures. *l. 3. § eiuſdem ff. de teſtib. cap. cum nobis. cap. licet ex quadam & cap. licet vniuerſis. extra. eod. tit.* ſemper enim quod plus eſt vincere conſueuit. Bald. *in conſi. 380. Tres ſunt caſus. col. 1. circa med. lib. 1.* & duo teſtes præferuntur vni, cuiuſcunq; fuerit dignitatis. Dec. *in conſi. 284. column. 4. poſt princ. per tex. in d. c. cum nobis in d. cap. licet ex quadam & in d. c. licet vniuerſis.* Quid igitur ſe fundat pars in duobus triennis continuis, quibus ſemper ſolutum ſit, quando oſtenduntur tot aliæ ſolutiones, aut tot alia depoſita habentia non modica interualla, quibus ſolutũ nihil probatur, & ſemper militat contra partem *reg. d. l. expreſſa.* Sauiliani 3. Iunii 1547. Aymo Crauetta ex Sauil. I. V. D. ſub correctione, &c.

S V M M A R I A.

1 *Qui habet ius ... perpetuum poteſt imponere leges ſubditis.*
2 *Dominus inferior poteſt facere ... in auxilium prohibitionis ſuperioris.*
3 *Portans arma præſumitur habere malum animum.*
4 *Defenſio non excuſat niſi ſit neceſſaria.*
5 *Antiquitas temporis non minuit peccatum ſed auget.*

CONSILIVM CCCXIIII.

Pro Magnificis dominis Monaſterolii contra eorum ſubditos, an poſſint domini prohibere delationem armorum.

DIVINO ſubſidio ex corde poſtulato. Illud quæritur, an domini Caſtellanus Monaſteroli potuerit inhibere delationem armorum ſubditis ipſius loci ſub pœnis, de quibus in ipſa inhibitione ratione vitandi ſcandali ob homicidium admiſſum in perſonam Iacobi de Palario die præcedenti? videretur dicendum prima fronte quod non, iuriſdictio enim Caſtellani tota dependet à poteſtate dominorum ipſius loci, quia non poſſunt domini concedere maiorem poteſtatem eorum officiariis quam ipſi habeant. *l. traditio. ff. de acquir. rerum dominio. regul. nemo plus ff. de regul. iur.* ſed non videtur quod domini alicuius loci habeant poteſtatem faciendi eiuſmodi inhibitiones, aut proclamata inhibitoria, ideo non poteſt dominus alicuius caſtri aut loci inhibere ſubditis ius piſcandi aut venandi. Ioan. Fab. *in §. flumina autem. Inſtit. de rer. diuiſ.* Guido Papæ *quæſt. 414. Verum latrones.* refert & ſequitur Decius *in conſi. 271. in prin. & in conſi. 302. colum. 6. num. 9.* Addo Bald. *in conſi. 410. Quæritur vtrum dominus. colum. 2. circa fin. lib. 5.* ¶ Secundo dicunt ſubditi ſe arma deferre ob cauſam defenſionis, & ob militum incurſiones, quæ defenſio dicitur de iure naturali, nec à ſupremo Principe tolli poteſt, vt habetur *in l. vt vim. ff. de iuſtit. & iure.* & licitum eſt homicidium ex cauſa defenſionis etiam de iure diuino 2. Reg. cap. 2. Bald. *in conſi. 312. Viſo actu. column. 2. poſt med. lib. 4.* ergo iniuſta videtur prohibitio vnius inferioris, per quam defenſionis facultas aufertur. ¶ Tertio allegant ſubditi conſuetudinem antiquiſſimi temporis circa ius deferendi arma per locum Monaſteroli & eius diſtrictũ, ideo talis conſuetudo ab inferiore tolli nõ poteſt, nam conſuetudo dicitur ius ciuile tantum, ſeu non ſcriptum, à Principe approbatum. *§. ex non ſcripto. Inſtit. de iure na-*

turali, gent & ciuili. ſed inferior à Principe ius ciuile tollere aut ei derogare non poteſt. *l. minor autem magiſtratus. ff. de minor. cap. cum inferior. de maior. & obed. cum ſimilib.* ſolus enim Princeps dicitur ſupremus poſitiuum, & contra illud poteſt diſpenſare de plenitudine poteſtatis. *l. Princeps ff. de legibus l. digna vox. C. eod. tit. cap. ſignificaſti. de elect. c. 1. de tranſact. c. propoſuit. de conceſſ. præbend. cum ſim.* Solus igitur Princeps habet poteſtatem tollendi conſuetudinem, vel alius habens poteſtatem ſtatuendi ius commune. *iuxta not. in l. omnes populi. ff. de iuſtitia & iure* ¶ Sed præmiſſis non obſtantibus contrarium puto de iure verius, quod imo potuerint domini Monaſterolii aut eorũ Caſtellanus facere eiuſmodi proclamam inhibitoriam delationis armorum ſequentibus fundamentis. Et
1 primo, † quia poteſt dominus loci habens ius perpetuum non temporale ſtatuere & ordinare contra eius ſubditos imponendo legem quam vult dum modo nihil faciat ad æmulationem ſuperioris. Baldus *in conſ. 359. Verißimum eſt. in fine. lib. 2.* & poteſt dominus loci ſtatuta condere, dum modo illa non fiant ad priuatam vtilitatem ipſius domini, puta quod ſubditi vadant ad molendum ad eius molendinũ, aut coquendum ad eius furnũ, vel dummodo talia ſtatuta non contineant dolum aut iniquitatem: late Bal. *in conſ. 41. Quæritur vtrum dominus. libro 4.* & poteſt dominus alicuius loci etiam ſuperiorem recognoſcens ſtatuta condere præter ius, dummodo illa ſint honeſta, iuſta. Bal. & Seuer. *in d. l. omnes populi. ff. de iuſtit. & iure* Alex. *in l. nemo poteſt. col. 1. in fin. ff. de leg. 1.* Soc. *in conſ. 272. colu. 5. verſ. 5. principaliter. lib. 2.* Ideo poteſt dominus loci ſtatuere circa cauſam damnorum, deputando camparios & mulctas imponendo contra damnum dantes. Dec. *in conſ. 199. col. 2. poſt medium.* Brunus Aſtenſ. *in conſ. 101.* Similiter poteſt dominus loci ſuperiorem recognoſcens facere ſtatutum ſuper ordine & modo procedendi in cauſis eius curiæ. Angel. *in conſ. 326. Ex themate & actu. col. fi. circa med.* Similiter poteſt dominus ex cauſa ſi timeat proditionem inhibere ſubditis ne accedant ad territorium hoſtis ipſius domini. Bald. *in conſi. 483. Magnificus dominus. col. 1.* Modo prohibitio armorum videtur facta, iuſta & honeſta, conformis iuri communi, vt infra dicemus in ſequenti fundamento, nec pertinet talis prohibitio ad vtilitatem dominorum priuatam, ſed publicam, vt omnia in quiete & ocio fiant, ergo valida videtur ordinatio, vt ne arma circum-
2 ferantur. ¶ Secundo, licet inferior dominus nihil poſſit ſtatuere aut ordinare contra ius commune. *l. formam. Cod. de officio Præfecti. l. nam & magiſtratus. ff. de arbitris.* Alex. *in dicta l. nemo poteſt. col. 1. ff. de legat. 1. in princ. colu. 4. ff. quod quiſque iuris.* poteſt tamen dominus loci inferior facere ſtatutum in auxilium prohibitionis ſuperioris appouendo pœnam aut mulctam prohibitioni ſuperioris. *gl. clement. ne Romani. in verbo, ſolis. & ibi Card. q. 3. de electio.* Moder. *in cap. quod ſuper his. de maior. & obedient.* Decius *in dicto conſ. 199. col. 3. in prin.* Adde Feder. de Senis *in conſi. 181. ſtatuto Epiſcope. in fine.* vbi quod Epiſcopus conſtitutionibus ſuis pœnalibus poteſt ius commune iuuare, pœna etiam in iure non expreſſa, allegat Hoſtien. *in cap. fin. de offic. Archipreſbyt.* & tamen non poteſt Epiſcopus ſtatuere contra ius commune. Ex qua concluſione in terminis, videtur decidi tota difficultas præſentis conſultationis, nam vſus armorum de iure communi prohibetur. *C. vt armorum vſus. in rubro & nigro. libro 11. in auth. de armis.* Bart. *in l. prima. ff. ad legem Iuliam de publ.* quod maxime procedit in ruſticis. *cap. 1. §. ſi quis ruſticum. de pace tenend. in vſibus feud.* vbi ruſticus arma ferens, vel arma perdit, vel ſolidos viginti ſoluit nomine pœnæ ad iudicis electionem. Itaq; domini Monaſterolii interdicendo delationem armorum nihil ipſi videntur de nouo feciſſe, ſed tantum legis præceptum exequi. Actus enim non attribuitur exequenti, ſed mandanti aut conſtituenti *l. item eorum. §. ſi decuriones. ff. quod cuiuſque vniuerſ. nomin.* Bart. *in l. vnum ex familia. §. ſi de Falcidia. ff. de legat. 2.* vbi ſi conſilium generale dat poteſtatem prioribus nominandi aut eligendi poteſtatem, dicitur poteſtas electus à conſilio mandante, non à prioribus mandatum exequentibus, qui enim factum alterius exequitur aut declarat, nihil dicitur noui facere. *c. literis. de reſcript. cap. nouit. de appellat.* Ideo ſi heres vendit rem ex mandato teſtatoris dicitur emptor rem habere ex vltima voluntate, & ab ipſo teſtatore, non ex venditione heredis. *l. heres. ff. de act. empt.* Ita quòd ſubditi conquerentes aduerſus dominos interdicentes armorum vſum, magis videntur lamentari de lege prohibente quam de ipſis dominis legis inhibitionem exequentibus. ¶ Tertio conſidero, quod non ſolum potuerunt domini de Monaſterolio eiuſmodi inhibitionem pœnalem facere per ſupradicta, ſed etiam ad eam faciendum tenebantur, nam tenentur domini ſubditis vt iuſtitiam [illegible] Baldus *in dicto conſ. 483. Magnificum dominum. col. 1. libro* [illegible] *c. 1. de forma fidel.* dicitur enim dominus pater ſubdi[illegible] *in ſi. C. de debito. civium. libro vndecimo.* Guido Papæ *queſt. 63* [illegible] *quamuis homines.* pater autem tenetur ad inſtructionem [illegible] gationẽ liberorum. 2. Regum capite tertio: In die illa [illegible] aduerſum Heli omnia quæ locutus ſum ſuper domum [illegible] cipiam & complebo, prædixi enim ei quod iudicaturus [illegible] domum eius in æternum propter iniquitatem, eo quod [illegible] rat indigne agere filios ſuos, & non corripuerit eos, & [illegible] quenti expoſitus plaga magna, quia Heli correpti[illegible] oo. Idem in Principe qui debet ſubditos corrigere [illegible] eorum de manu eius requiritur *cap. irrefragabili. de offi. ord.* [illegible] excuſatur paſtor ſi lupus oues comedit ipſo paſtore [illegible] Ezechiel. cap. 13. *cap. quamuis. de regulis iur.* Ideo negligens [illegible] endo delinquentem, quem corrigere poteſt. dicitur fautor & particeps criminis. *cap. quanto. de ſententia excommunicat. cap. non* [illegible] *minis. 2. quaeſt. 7. cap. negligere. 2. quaeſt. 7. & cap. error 23. diſtinct. c. ex* [illegible] *dignum. de homicid. cap. dilecto. de ſententia excommunic. libro 6. regul. culpa caret. ff. de regulis iuris. a contrario ſenſu.* ¶ Et in domino [illegible] quod tenetur deputare cuſtodes ne damna dētur in bon[illegible] ditorum. Angelus *in l. ne quid. ff. de incend. ruin. naufrag. per text* [illegible] *C. de littor. & itinerum cuſtod. libro 12.* ſequitur Alexand. *in* [illegible] *colum. fin. libro 5.* ſi dominus caſtri tenetur cauere ne d[illegible] nia in prædiis, quanto magis teneri debet vt curet ne [illegible] dantur perſonæ, per viam prohibitionis armorum. [illegible] tio prohibendi arma, non alia fuit, niſi vt malo obuiam [illegible] Ideo dicunt Doctores, † quod portans arma præſumitur [illegible] te malum animum. *gloſ. in cap. 1. § ſi quis ruſticus in verbo, [illegible] de pace tenenda.* Alex. *in dicta l. 1. ff. ad leg. Iul. de vi publ. in addit. ad Bart.* [illegible] *conſilio 103. colum. 3. ante med. verſicul. pro eo facit. libro 1.* Veron[illegible] *conſi 2. colum. 1. verſic. quinta coniectura.* Iaſ. *in §. ex maleficiis. column. 13. nu. 81. de action.* Itaq; male videntur ſubditi conqueri in domin[illegible] illud facientes ad quod ipſum iure tenetur. Amplius dico quod dominus negligens in puniendo ſubditum priuatur iure ſuo & dominio directo, quod habet in bonis ſubditi. *cap. ad abolendum. de heret.* Ioan. Fabr. *in auth. bona damnatorum. quaeſt. pen. C. de bon. damn.* Felin. *in cap. excommunicamus. colum. 2. verſic. [illegible] ſaluo iure. &c. de heret.* & maxime probanda erat delatio armorum ſtante homicidio admiſſo in die præcedenti iuxta illud, præteriti ratio [illegible] futura facit. Ideo enim dat natura prudentiam hominibus [illegible] futura proſpiciant. Bald. *in conſi. 82. Locata fuit. colum. 2.* [illegible] *lib. 1. per text. in l. ſi quis domum. §. pen. ff. locati.* Debuerunt enim domini [illegible] naſterolii, proſpicere quod alia etiam homicidia ſequi p[illegible]nt, aut vulnera & iniuriæ, ſi armorum vſus prætereà toler[illegible]tur fieret, quia ex præterito præſumitur in futurum. *cap. mandata. &* [illegible] *bam. de præſum.* & pro dominis text. ille diuinus *in l. aqui* [illegible] *ff. de vſufruct.* cui enim (inquit Iulianus) ad arma & rixam p[illegible] dere patiatur Prætor, quos poteſt iuriſdictione ſua com[illegible] re? Amplius ratione vitandæ diſcordiæ non ſolum poſ[illegible] dex prohibere delationẽ armorum, ſed etiam poſ[illegible] et præci[illegible] & prohibere partibus ſe inuicem perſequentib. ne vna tr[illegible] ante domum aut portam alterius. Bart. & Doct. *in l. quod* [illegible] *per glo. 8. vbi Iaſ. colum. 3. circa med. ff. de re iudic.* Ex præmiſſis abun[illegible] ſatis videtur iuſtificata intentio dominorum Monaſterol[illegible] luio ſupereſt ad contraria reſpondere, ex quorum diſſo[illegible] quæſtio ipſa ſplendidior fiat. Itaque non obſtat primum [illegible] mentum, quod dominus loci aut caſtri non poteſt p[illegible] tus piſcandi aut venandi, quia ius piſcandi in mari aut [illegible] nibus cuilibet liberum eſt de iure gentium. *l. nemo igitur. ff. de rerum diuiſ. §. flumina autem. Inſt. eod. tit.* & iure naturali piſces effi[illegible] untur capientium. *l. 1. § fin. ff. de acquir. rer. dom.* idem in iure [illegible] di, quod cuilibet liberum eſt de iure gentium. *l. 1. 2. & 3. ff. de acquir. rer. dom.* & æquiparantur ius piſcandi & venandi. *l.* [illegible] *in ſi fundi. §. aucupiorum quoq; ff. de vſufruct.* nimirum ſi [illegible] loca aut caſtri tale ius piſcandi & venandi prohibere non [illegible] teſt, quia etiam Princeps non poteſt tollere aut prohibere ea, quæ competunt de iure gentium. Bartol. & Doct. *in l. fin.* [illegible] *tra ius vel vtilit. publ.* ¶ Et in terminis quod non poſſit P[illegible] prohibere ius piſcationis aut venationis, tradit De[illegible] *in* [illegible] *197. colum. 1.* Iaſon *in conſi. 119. libro 2.* poſt Dec. Canoniſta *in cap. non eſt. de decimis.* Bene fateor, quod ſi qui redditus ex iur[illegible] di aut venandi percipiantur, puta ex præſcriptione tem[illegible] antiquiſſimi aut aliter, tales redditus annumerantur inter [illegible] lia & Principi ſoli competunt, aut alii domino habenti [illegible] regalia.

galia Aluar. *in cap. 1. colum. 4. in tit. quæ ſunt regalia.* Dec. *in conſi.* 197. *colum. fin. poſt prin.* Secus autem in iure portionis armorum, quod ipſum ius non dicitur de iure gentium, nec cuilibet liberum eſt, imo expreſſe prohibitum de iure ciuili, vt ſupra viſum eſt. Imo etiam iure diuino prohibita arma videntur Pſal. 67. Diſſipa gentes quæ bella volunt. Ideo cum vſus armorum prohibitus ſit de iure, potuerunt & poſſunt domini Monaſteroliſ talem iuris prohibitionem exequi, etiam pœnas appoonendo vbi à iure appoſitæ non eſſent, vt ſupra oſtendimus. Itaq; non valet argumentum de iure piſcandi & venandi ad ios ferendi arma, quia eſſet argoere à caſibus omnino diuerſis, habentibus rationem omnino diuerſam & ſeparatam, *contra l. fi. ff. de calumnia. l. Papinianus exulis. ff. de minor. l. natur. aliter. § nihil commune. ff. de acquirenda poſſ. §. cum ſimi.* ¶ Secundo reſpondeo, poſito & non conceſſo, vſus armorum permiſſus dici poſſet de iure aut conſuetudine, tamen etiam inferior ex cauſa poteſt ſtatuere contra ius. *l. ſi hominem ff. mandati.* vbi Bart. *in l. ambitioſa. colum. 2. in fin. ff. de decret. ab ordin. fac.* Alex. *in d. l. nemo poteſt. colu. 2. ff. de leg. 1.* Iaſ. *in d. l. omnes populi. in fin. & in repet. col. 2. in l. 1. colu. 1. C. de precib. Imp. offer.* Similiter ex cauſa valet ſtatutum in præiudicium ſingularium perſonarum, vt per Iaſ. *in l. 1. col. 2. ff. de legib.* Cauſa autem euidens & neceſſaria fuit ad vitandum ſcandalum ob homicidium admiſſum die præcedenti. Conſtat autem recedi à diſpoſitione iuris ratione vitandi ſcandali. *cap. quoniam. de iure patron. gloſſ. pen. cap. 1. de oper. nou. nunc.* & ratione vitandi ſcandali abſoluitur quis à iuramento etiam licito. Oldr. *in conſi. 95. colum. pen. in fin. per text. in cap. authoritate. 15. quæſt. 6.* ¶ Negatur tamen ius eſſe deferendi arma ex conſuetudine, quia talis conſuetudo ſæpius interrupta eſt & interrumpitur per principem armorum vſum pro temporum qualitate prohibentem, ideo de tali conſuetudine interrupta curandum non eſt *gl. in l. neino. §. temporalis. ff. de rendit. cum ſim.* vt per Alex. *in conſi. 173. colum. fin. lib. 6.* ¶ Non obſtat ſecundum argumentum, quod licita ſit delatio armorum ex cauſa defenſionis, quia iſtud procederet probata cauſa defenſionis, puta ſi probetur inimicitia capitalis cum aliquibus perſequentibus, nam allegans defenſionem tenetur eam probare, vt late habetur *in d. l. vt vim. ff. de iuſtit. & iur.* ¶ Secundo reſpondeo, quod ratio defenſionis allegari non poteſt reſpectu hominum & habitantium in loco Monaſteroli, quia prohibitio ferendi arma eſt generalis omnes reſpiciens, ideo ceſſantibus armis nihil eſt quod alter ab altero metuat: nam ſublatis armis tollitur cauſa offendendi, & in conſequentiam ceſſat neceſſitas defendendi, radice enim præciſa, omnia corruunt, & omnes effectus ab ea prouenientes *l. ſi duo. §. idem Iulianus. ff. de iureiur. l. nam origo. ff. quod vi aut clam l. fi. C. de nuptiis. cum ſim.* Ex qua reſponſione retorquetur argumentũ contra partem, cum talis prohibitio delationis armorum fiat in odium impiorũ, & perſequentium alios vt cautum & proſpectum ſit bonis otium deſiderantibus, vt ne eos oporteat arma capere ob cauſam defenſionis. ¶ Infertur etiam ex hac reſponſione ſuſpicionem eſſe contra partem ſe opponẽtem aduerſus talem prohibitionem delationis armorum, quia, vt ſupra dictum eſt, præſumitur malus animus contra arma deferentem [illegible] contra ſe opponentes ceſſat armorum delatio. ¶ Tertio reſpondeo, poſito & non conceſſo, cõſiderari poſſet aliqua cauſa defenſionis, illa pertineret ad aliquos particulares tantum odia capitalia exercentes aut ſuſtinentes, in quibus defendendi neceſſitas cõſiderari poſſit. ¶ Sed hic non particulares ſe oppoſuerunt, ſed ipſa communitas in qua ipſa ius defenſionis conſiderari non poteſt ob odium particularium, imo potius damnum offenſionis totius Reipublicæ, ſi armorum vſus paſſim permiſſus ſit, ex quo quies publica perturbetur. Itaq; ad officium communitatis pertinebat, viſo homicidio, & odiis cœptis ad dominos adire, & eos ipſos rogare, armorum vſum vt interdicerent, non etiam aduerſus tale interdictum ſe opponere, neq; videbatur recipienda appellatio communitatis, cuius intereſſe non videbatur. *L. 1. in fi. ff. quorum appellat. non recip.* Communitatis enim intereſſe non videtur circa armorum delationem, niſi incumbat hoſtis publicus totius loci iacturam & interitũ captans, quo ipſo tamen caſu non quæuis loca ſe defendunt, ſed quæ munita ſunt & fortia ad hoſtem propulſandum, cæterum locus Monaſteroli non is eſt, qui ad defenſionem irruentis inimici audeat cogitare. ¶ Argui igitur poteſt à ſufficienti partium enumeratione, Aut vult communitas Monaſteroli ſe opponere prohibitioni armorum ex cauſa tangente publicam vtilitatem, & oppoſitio eſt euidenter friuola & patẽs retorcutionem, imo plena admirationis ſi audeat communitas adeo tenuis publice bellum agere aut ſuſtinere. Aut ſe opponit ob cauſam aliquorum particularium, & ſua nõ intereſt, ſed cauſam agant ipſi particulares qui ſua intereſſe putant, imo communitatis tunc magis intereſt armorum vſum interdictũ eſſe, ad quem modum occaſio ceſſat diſcordię & rixæ. Bene poſſet intereſſe & cõmunitatis quando dominis ius non eſſet ita prohibendi, & vellent eos ad ſubiectionem aſtringere contra ius. ¶ Non obſtat cauſa incurſionis militum, quia talis cauſa potius cederet damno ipſius communitatis, arguendo à communiter accidentibus, *iuxta gl. in l. nec, natalis. ff. de probat.* Etenim ſi armorum delatio permiſſa ſit ob militũ incurſiones, nihil aliud quã loci totius pernicies deſideratur. Siquidem non ſuſtinet ſuperior ius aliquod ſibi dicere propria authoritate, & quid futurũ cenſet cõmunitas Monaſteroli, ſi pro damno aliquo militum aut famulãtium eiſdem, mors aut vulnera inferantur, an nõ totus locus in diſcrimẽ adducitur, quod ipſum ſatis probatum ſit ſolo experimento & effectu. Rurſus per tempus induciarũ aut pacis & ſub Principe iuſtitiæ ſtudioſiſſimo cum ceſſent querelæ militum & inſolentium, ceſſare oportet & cauſam defenſionis. Iam cũ cauſam defenſionis probare appellantes oporteat per ſupradicta, probandæ erant inſolentiæ militum, aut eorum incurſiones ex quibus geſtatio armorum neceſſaria comprobetur, non etiã ſufficit allegare cauſam defenſionis, alioquin nũquam prohiberi poſſet armorum vſus, ſiquidem nunquam non allegaretur eorum neceſſitas. ¶ Non obſtat quod dicitur de inſolentia familiarium familiæ dominorum, quia adeundus eſt ſuperior dominus caſtigans, ſi ſubditos male tractent, aut inquietari permittant ab eorum familia. Præterea talis inſolentia non pertinet ad totam communitatem. Recurrant particulares quorum intereſt ad ſuperiorem, cum non de futura ſit prouiſio aut per viam cautionis de non offendendo, aut per viam licentiæ deferendi arma ob cauſam defenſionis. Cæterum non debebat tota vniuerſitas ſe opponere, quaſi odium capitale exerceant contra omnes & ſingulos de vniuerſitate & quaſi eo modo bellum in loco commoueri oporteat. † In qua re conſidero quod defenſio excuſat niſi ſit neceſſaria. Bal. *in l. data opera. C. qui accuſ. non poſſ.* [illegible] Scrib. *in d. l. vt vim. ff. de iuſtit. & iure.* ſed non ſequitur, aliqui ſubditi aliàs fuerunt inſultati, ergo eos oportet omni tempore arma ferre vt ſe defendant, quia, vt dixi, poſt inſultum potuerunt & poſſunt ſibi prouidere alia via quam armorum, id eſt, per viam cautionis de non offendendo, aut aliter adeundo ſuperiorem, quo ipſo remedio cum vſi non fuerunt, ſed elegerint & eligant arma circumferre in dolo arguuntur, nam præſumitur dolus cõtra eos qui non vtuntur iuris remediis opportunis. *l. ſi procuratorem. § ſi ignorantes. ff. mandati l. fi. § illud. in verſ. ſumma ope. C. de tempo. appel.* quæ iura ad hoc citat Bal. *in conſ. 395. Pro domino Dyna colu. 2. lib. 2.* & maxime hic cadit ſuſpicio doli, quia vt dictũ eſt animus malus præſumitur in deferente arma, & ſi iſta accuſatio ſubditorũ admittatur, ſequeretur quod armorum delatio nunquam poſſet prohiberi, nam ſemper dicitur conſtare odia capitalia, & aliàs inſultatio facta eſt, imo factum inſultationis cauſam præſtat ita prohibendi ne veniatur ad arma, & præmiſſa reſponſio vrgentiſſime comprobatur per ea. *in d. l. æquiſſimum. ff. de vſufruct.* ¶ Non obſtat tertium argumentum fundatum ſuper aſſerta conſuetudine arma deferendi, quia reſpondeo quod prohibetur armorum vſus ob cauſam publicæ vtilitatis vt ne quies publica perturbetur, neue cædes ſequantur & vulnera, ſed diſſidia ceſſent & rixæ, quo caſu non valet conſuetudo cõtra talem prohibitionem tanquam præſtãs materiam delinquendi. *l. conuenire ff. de pactis dota. c. ex parte. & c. fi. de conſu. c. nos conſuetudinem. 12. d. c. flagitia. 32. q. 7.* Calde *in conſ. 1. in tit. de regula.* Bellamera *in c. Rom. in prin. col. 4. poſt med. & colu. 6. circa fin. de foro compet. libro 6.* Roman. *in conſilio 90. in fin.* nec dicitur iſta conſuetudo, ſed corruptela pernicioſa. *c. mala 8. diſt.* Idem in lege aut ſtatuto dante materiam delinquendi quod non valet. *l. cum lex.* vbi Barto. & Bald. *ff. de legib. cum ſimil.* vt per Iaſ. *in l. at prætor. la 1. in princip. in 7. not. ff. de iureiur. in l. firmin. §. illud nulla ff. de pac.* nec poteſt ſtatutum delinquentibus fauorabile à principe confirmari tanquam odioſum legi & naturæ factis moribus. Bald *in c. ad noſtram. de probat.* quod Bald. dictum pro egregio commendat Iaſ. *in l. centeſimis. §. 1. colum. pen. circa fin. ff. de verb. obl.* & infinita id genus cumulari poſſent ad tædium. ¶ Nec iuuari poteſt conſuetudo nutritiua peccati ex lapſu temporis antiquiſſimi, cuius initii memoria non extat in 4

5 contrarium, quia † antiquitas temporis peccatum non minuit ſed auget. *c. cum tanto. in princip. de con uet. ad idem text. in c. 1. de conſuet. libro 6.* quem text ita declarat Curtius iunior *in conſ. 158. col. 5. verſ. eſt verum quod reperitur.* & quod mala conſuetudo tempore non firmetur, eſt text. *in §. 1. auth. vt nulli iud.* ſimile videmus in lege iniuſta, quæ non præſcribitur aliquo tempore, quia lapſus temporis legem iniuſtam non validat. *gl. in c. inter cætera. 16. q. 3.* videmus etiam quod antiqua poſſeſſio non iuuat poſſeſſorem beneficii ſine titulo valido ne detur occaſio intruſionis. *cap. dilecto. de præb. c. 3. de inſtit. c. 1. de reg. iur. lib. 6.* Calc. *in conſ. 9. in tit. 3. de rerum permuta.* Iam nemo negabit non valere ſtatutum aut conſuetudinem quod delicta non puniantur, ideo non valet ſtatutum quod calumniator non puniatur. Bald. *in l. qui crimen. C. qui accuſ. non poſſ.* Imo non valet ſtatutum minuens pœnam, puta quod pro homicidio puniatur quis pecuniariter. Doct. *in c. fi. de conſuet.* Decius *in c. cognoſcentes. de conſtit.* Ergo etiam valere non poteſt cõſuetudo impunitiua eius per quod ad delictum peruenitur, & ſic qua ratione delictum homicidii, & vulnerum permitti impune non poteſt, eadem ratione permitti non poteſt delatio armorum, per quæ ad homicidia & vulnera peruenitur. *l. oratio. ff. de ſponſ.* ideo ſicut non valet ſtatutum aut conſuetudo quod calumniator non puniatur, ideo non valet conſuetudo quod aduocatus non teneatur iurare de calumnia, quia per talem conſuetudinem daretur occaſio delinquendi & calumniandi. ita Bellamera *in d. c. Rom. in princ. colum. 4. poſt med. de foro compet. libro 6.* Nec dicatur, quod talis conſuetudo ſiue bona ſiue mala, ſatis eſt quod à principe toleratur, ubi id ab inferiore tolli non poteſt, quia dico, prout iam dixi, quod imo ſæpius interrupta eſt, & interrumpitur talis conſuet. à principe ſecundum temporis conditionem. Secundo reſpondeo quod conſuetudo dicitur ſtricti iuris & reſtringitur ad ſuos terminos. *l. § Iul.* vbi Bart. *ff. de minore aſtring. prima.* Mode. *in l. de quib. ff. de leg.* Ideo conſuetudo deferendi arma, vbi efficax dici poſſet, reſtringi deberet ad limites patientiæ dominorum, non ſubſiſtente aliquo timore ſcandali non etiã extendi debet ad caſum quo domini ex cauſa vitandi ſcandali propter homicidium recens armorum delationẽ prohiberent. ¶ Non obſtat & quod domini Monaſterolii olim tolerauerint delationem armorum in ſubditis, quia talis tolerantia nõ prodeſt, quando per eam occaſio præſtatur delinquẽdi, nam quando Doct. dicunt non valere conſuetudinẽ per quam datur materia delinquendi, neceſſario præſupponunt tolerantiam eorum, ſine quibus conſuetudo induci non poteſt, & tamen concludunt conſuetudinem non valere, & ſic Princeps non poteſt expreſſe condere legem iniquam per quam occaſio datur delinquendi, multo minus dominus caſtri inferior poterit conſentire conſuetudini nutritiuæ peccati & iniuſtitiæ. ¶ Secundo reſpondeo, quod multa per patientiam tolerantur, quæ ſi deducta fuerint in iudicium iuſtitia exiſtente tolerari non debent. *c. cum iamdudum. de præb.* Oldr. *in conſ. 14. Cum quæritur. col. fin.* Rota *deciſ. 840. Vtrum valeat conſuetudo. in antiq.* ¶ Poſtremo conſidero, quod ſi nõ poſſit dominus inhibere ſubditis delationem armorum, ligari quodammodo videntur manus ſuperioris ne iuſtitiam reddat, ius enim conſiſtit in prohibendo. *l. legis virtus. ff. de legib.* ſed non valet conſuetudo per quam ligantur manus ſuperioris. Rota *deciſ. 113. Nota, quod non valet. in antiq.* ¶ Sed dicet aliquis, ergo ſubditi Monaſterolii armis perpetuo abſtinebunt, quæ ipſa tolerat ſuperior: reſpondeo quod ceſſante timore ſcandali pace compoſita inter rixantes vel cautione præſtita de non offendendo ab vtraq; parte inſtare poterant ſubditi apud dominos circa ſublationem prohibitionis, aut alias ad ſuperiorem adire, cæterum talis appellatio ita ſimplex iuriſdictionem dominorum nimium viſa eſt lædere. ¶ Circa aſſertum grauamen, quod Iudex nõ potuerit neq; debuerit declarare pœnam 20. ſolidorum, de qua *in d. §. ſi quis ruſticus. de pace tenen.* intelligi de 20. aureis, & quod id lege aliqua cautum non reperitur, non videtur laborandum, quia imo videtur cautum per tex. *in §. inſt. de pœna temere litig. iuncto tex. in l. ſi libertus & in l. ſi. ff. de in ius vocand.* Ex quibus iuribus ſimul iunctis probatur quod ſolidus & aureus in iure pro eodem accipiuntur, vt declarat gloſ. *in d. §. ſi. & gl. in l. quicunq; in gl. 2. C. de ſeruis fugit. cum ſimil.* vt per Iaſ. *in d. l. fin. ff. de in ius vocand.* & dicit Bar. *in l. quotieſcunq; C. de ſuſcept. & archa. lib. 10.* quod vbi dictio, ſolidus, profertur à iure, intelligitur de aureo ſolido, ſed vbi profertur ab homine, intelligitur ſecundum conſuetudinem regionis de ſolido minuto paruæ monetæ Sauiliani 13. Iunii 1547. Aymo Crauetta ex Sauiliano I. V. D.

S V M M A R I A.

1 *Deſiſtens ab vſu inſtrumenti falſi poſt productionem non tenetur.*
2 *Incertitudo rei quid aliquando poſſit operari.*
3 *In re non deciſa à legibus, ciuilibus creditur iuri canonico.*

CONSILIVM CCCXV.

Pro Franciſco Hoſpitalerii de Caſtiglolis contra procuratorem curiæ eiuſdem loci.

DIVINO ſubſidio ex corde poſtulato. Franciſcus Hoſpitalerii de Caſtiglolis Marchionatus Salutiarum produxit inſtrumentum quoddam quitationis in iudicio contra quoſdam de Roſana creditores Blaſii Hoſpitalerii fratris ipſius Franciſci, poſt quam productionem venit ad notitiam ipſius producentis illud inſtrumentum eſſe falſum, ob id ab vſu eius abſtinuit. Quæritur, an de falſo teneatur poſtquam abſtinuit ab vſu. ¶ Videretur dicendum quod ſic, quia vbi opponitur vtenti falſi inſtrumento quod ipſe vtens illud fabricauit aut fabricari fecit, non euitat pœnam falſi abſtinendo ab vſu. *l. ſi falſos. Cod. de falſis.* modo nos habemus vt quod vtens falſo inſtrumento præſumitur illud fieri feciſſe niſi nominet aut oſtendat authorem. Iac. Butr. & Bal. *in l. maiorem. C. de falſis per tex. in l. iubemus. C. de proba.* quod dictum pro notando refert & ſequitur Alex. *in conſ. 7. col. 2. verſ. 6. videtur. lib. 1.* Iaſ. *in conſ. 168. col. 2. poſt med. lib. 4.* Itaq; ſi præſumitur producens inſtrumentum illud fieri feciſſe, eius abſtinentia ab vſu non excuſat. *per d. l. ſi falſos.* ¶ Sed præmiſſis non obſtantibus, quæ vere non obſtant, contrarium † puto de iure verius, quod deſiſtendo ab vſu puniri non debeat, niſi probetur quod producens inſtrumentum falſo fabricauerit, aut fabricari fecerit, per tex. *in cap. dilectus. verſic. verum nos attendentes. de exceſſ. prælat.* vbi producens literas falſas aut clauſulam falſum habens fuit abſolutus, quia non fuit probatum quod producens clauſulam illam falſam appoſuerit, aut apponi fecerit, vel quod ſcienter literis illis falſis vſus fuerit. & ideo dicit Abbas *in 5. nota.* quod vtens inſtrumento falſo in iudicio puniri non poteſt pœna falſi, niſi probetur quod ipſe falſauerit, vel ſcienter vſus fuerit, & quod præſumitur ignorantia ſi poſt obiectionem falſi deſiſtit ab vſu eius. ¶ Secundo conſidero, quod Blaſius frater producentis debitor erat & inſtrumentum quitationis loquitur in fauorem Blaſii defuncti cuius eſt heres ipſe Franciſcus producens, qui ipſum inſtrumentum reperit inter ſcripturas domus poſt mortem ipſius Blaſii, ſuper qua inuentione dicti inſtrumenti eſt paratus iurare, iuramentum autem in tali caſu videtur ſufficere, ſicut dicitur de eo qui iurat ſe inueniſſe inſtrumentum de nouo ad retractandum ſententiam. Bartol. *l. admonendi. colum. 2. circa medium. verſi. quod autem iſta inſtrumenta. ff. de iureiur. per text. in cap. paſtoralis. de exceptio. Ad idem text. in l. fin. C. de fide inſtrum. in cap. nullis. & in cap. vt circa. de elect. libro 6.* quæ tria iura ad hoc citat Socin. *in conſilio 194. in princip. libro ſecundo.* ſed ante eum illa adduxit Roman. *in dict. l. admonendi.* vbi Iaſon *in repe. columna 25. verſicul. qualiter autem probabitur.* & ſufficit iuramentum ad retractandum ſententiam in præiudicium tertii à fortiori ad vitandum pœnam, hoc ita præſuppoſito quod ipſe Franciſcus inuenerit iſtam ſcripturam quitationis poſt mortem fratris in ſacculo ſcripturarum: dico ceſſare præſumptionem contra ipſum Franciſcum cum potuerit reponi talis quitatio per Blaſium defunctum, & ratione incertitudinis ipſe Franciſcus puniri non poſſet in aliquo. *l. abſentem. ff. de pœnis.* Roman. *in conſilio 401. eodem præſuppoſito.* Salic. *in l. fin. C. de quæſtio.* vbi fortius voluit Salic. quod quando plures fuerunt in rixa, & mortuus non habet † niſi vnicum vulnus, nec ſcitur à quo fuerit illatum nullus poteſt torqueri ratione incertitudinis: & tamen in caſu Salic. apparet quod omnes fuerunt in rixa, quid dicemus vbi non apparet quod vterq; frater immiſerit talem quitationem in ſacculum: ¶ Non obſtant modo adducta in contrarium quod vtens falſo inſtrumento præſumitur illud feciſſe aut fabricari feciſſe niſi nominet vel oſtendat authorẽ, quia illud dictum ſalua reuerentia tantorum patrum non videtur verum, imo contra text. *in d. c. inter dilectos. de exceſ. præla. vt ſupra deduximus.* ¶ Non obſtat textus *in dict. l. iubemus. Cod. de probat.* quia loquitur contra eum qui ſcripturam ſuſpectam comminiſcitur, & ſic præſupponit text. quod iſtud appareat & probetur quod quis commentus fuerit ſcripturam ſuſpectam, id eſt, illam fecerit aut fieri fecerit, quod tunc niſi probet eam eſſe veram ex quo ſuſpecta eſt, habetur vt ſuſpectus de falſo, non autem dicit text. quod producens ſcripturam ſuſpe- 1

etiam præſumatur illam feciſſe, aut fieri feciſſe. ¶ Non obſtat tex. *in d. l. maiorem. C. de falſis.* quia retorqueo illum tex. quia textus *in ulti. glo.* facit differentiam inter vtentem falſo inſtrumento & falſo reſcripto, quia in falſo reſcripto adhibetur maior aſperitas: quam etiam differentiam expreſſe voluit gl. *in d. cap. inter dilectos. de exceſ. præla.* itaque cum *d. l. maiorem.* ſolum procedat in vtente falſo reſcripto, non debet extendi ad vtentem falſo inſtrumento, quia eſſet agere à caſibus omnino diuerſis & ſeparatis habentibus diuerſam rationẽ inter quos lex expreſſe conſtituit differentiam *l. natur. aliter. § nihil commune. ff. de acquir. poſſ. cum ſimilibus.* neſcio igitur quomodo Doct. legem loquentem in reſcripto voluerint trahere ad inſtrumentum, in quo ipſa lex ipſa
3 expreſſe voluit aliud eſſe. ¶ Poſtremo † caſus de quo agitur, expreſſe reperitur deciſus per ius canonicum. *in d. c. inter dilectos.* In iure autem ciuili negari non poteſt quin res ſit dubia cum nullus tex. ita clare & expreſſe loquatur, ergo ſtatutum erit diſpoſitioni iuris canonici. *iuxta not. c. 1. & 2. de ope. no. nun. per Alex. ind. in l. priuil. Cod. de ſacroſ. eccleſ. in addi. ad Bartol.* & contrarium poſſet prodocere vbi ageretur de facto proprio. ſecus vbi de alieno prout hic. ¶ Sed finge citra præiudicium veritatis, dictum Iacob. Bar. Bald. Alexan. & Iaſ. procedere (quod mihi nequaquam placet) dico quod ſecundum eos ſatis eſt nominare authorem, ſed hic reus nominat authorem, id eſt, quod reperit quitationem in ſacculo, vbi etiam frater defunctus tenebat ſcripturas & ipſum hoc probare paratus eſt per iuramentum, nec habet præſumptionem iuris contra ſe, quia frater defunctus ad quem negocium pertinebat, ipſum illud facere potuerit, ergo melius eſt nocentem abſoluere quam innocentem condemnare. *d. l. abſentem.* Amplius probabit reus per teſtes, ſi opus fuerit, veritatẽ facti, id eſt, quod defunctus frater debitũ omne diſſoluit, quo ſtante res videtur clara etiam quod illa quitatio eſſet omnino falſa, quia nulli præiudicialis *l. damni. C. de falſis.* ſed ſuper hoc latius non inſiſto, quia ad præſens non expedit. ¶ Ex quibus videtur concludendum procedi non poſſe criminaliter contra ipſum Hoſpitalerum niſi probetur quod ipſe fabricauerit aut fabricari fecerit inſtrumentum productum cum deſiſtat ab vſu eius, audito quod intendit fiſcus ipſam quitationẽ impugnare de falſo per tex. *in d. cap. inter dilectos.* & vbi procedi poſſit contra eum, tamen ex tali præſumptione condemnari non poteſt neque torqueri, ſed tantum ad capturam procedi, quia text. *in d. l. iubemus.* dicit quaſi falſarios eſſe deferendos, non etiam dicit puniendos aut torquendos, vel procedit ille text. in ciuilibus, non in criminalibus, vt in ciuilibus, quando ciuiliter agitur ſola ſuſpicio falſitatis habeatur pro falſitate vt inſtrumentũ ſuſpectum non probet, ſed vbi agitur criminaliter non operatur talis ſuſpicio, niſi reſpectu capturæ, ita declarat Decius *in cap. peruenit. de conſtit. vel in conſ.* 175. *col.* 5. *in conſ.* 189. *col.* 2. *in conſ.* 602. *col.* 2. *in fin. & in conſ.* 615. *col. fin.* Idem videtur ſequi Curt. iun. *in conſ.* 64. *col.* 3. *in conſ.* 132. *col. fin. in conſ.* 146. *col.* 3. *& in conſ.* 177. *col.* 3. *circa med.* Sauiliani 15. Iunii. 1547. Aymo Crauetta ex Sauil. I. V. D. Sub correctione, &c.

SVMMARIA.

1. *Quod bona alienata imponuntur in legitimam & Trebellianicam, oportet quod fiat alienatio ex cauſa voluntaria.*
2. *Fructus in quo caſu non veniant in reſtitutionem.*
3. *Credita teſtatoris dicuntur bona hereditaria.*
4. *Fideicommiſſum reſtitui debet deducto ære alieno.*
5. *Fideicommiſſum conditionale non tranſmittitur.*

CONSILIVM CCCXVI.

Pro Anna & Petrina filiabus quondam Matthæi Brucis de Carmagnolia contra Sebaſtianum Bricis.

DIVINO ſubſidio ex corde poſtulato. Matthæus Bricu de Carmagnolia inſtituit Io. Amedeum Manfrinum & Bartholomæum eius filios, quos inuicem ſubſtituit, & ipſis omnibus decedentibus ſine filiis ſubſtituit vulgariter, pupillariter, & per fideicommiſſum Sebaſtianum & Clementem nepotes ſuos, & Auguſtinam ſororem ſuam, nec non filios Petrinæ etiam ſororis ſuæ æquis portionibus in ſtirpes, & non in capita. Deceſſerunt filii & heredes teſtatoris omnes ſine liberis ſuperſtitibus Sebaſtiano & liberis Petrinæ, Auguſtina autem ſoror teſtatoris præmortua, & Manfrino fratre qui vltimo loco deceſſit ſine liberis, ſimiliter prædeceſſit Clemens, ſuper quo themate oriuntur dubia ſequentia. ¶ Et primo quam partem petere poſſit dictus Sebaſtianus virtute dicti fideicommiſſi. Breuiter puto quod portio ſubſtitutorum qui deceſſerint ante diem fideicommiſſi, id eſt, Clementis & Auguſtinæ accreuerit Sebaſtiano & filiis Petrinæ ſubſtitutis ſuperuenientibus, quia ius accreſcendi locum habere etiam in fideicommiſſis vniuerſalibus, *l. vnic. § in primo itaq. ibi, vel coniunctus fuerat. & § his itaque. C. de caduc. toll.* Bart. *in conſ.* 53. *Picardus.* Guid. Pap. q. 335. Curt. iun. *in conſ.* 85. *col.* 7. Conſequenter portio Auguſtinæ accreuit filiis Petrinæ eius ſororis, & portio Clementis accreuit Sebaſtiano fratri, quia in iure accreſcendi ſeruatur ordo iuris, vt præferantur cõiunctione legali, & qui ab inteſtato alios excludunt. Bal. *in conſ.* 37. *Proponitur quod dom. Margarita. & in conſ.* 116. *Conſiderato. libr.* 4. & poſito citra præiudicium veritatis, omnibus ſuperſtitibus accreſceret ſine aliqua prælatione, adhuc idẽ iuris, quia ex æquo omnibus accreſceret, itaque concludo in hoc dubio quod Sebaſtianus ſolum poteſt agere pro dimidia nec poteſt aliquid petere pro portione ſpectante ad alios ſubſtitutos, id eſt, ad filios Petrinæ, quia in ea portione ius nullum habet, ſine iure autem & actione experiri nemo poteſt. *l. ſi pupillus. § videamus. ff. de neg. geſt.* ¶ Secundo dubitatur, quia Manfrinus heres teſtatoris grauatus & vltimo loco defunctus alienauit aliqua bona hereditaria pro ſolutionibus talearum & onerum, quib. fructus bonorum minime ſuppetebant, an talia alienata imputari debeant in legitimam & Trebellianicam ipſius Manfrini: Breuiter puto quod non, quia vt † bona alienata non imputantur in legitimam & Trebellianicam oportet quod fiat alienatio ex cauſa voluntaria, vel ſi ex cauſa neceſſaria quod cedat in vtilitatem heredis grauati. Bar. & Doct. *in l. Marcellus. § res quæ. poſt glo. ibi. ff. ad Trebel.* Soc. *in conſ.* 114. *colum.* 1. *in fin. & col. ſeq. lib.* 3. Ideo ſi heres alienat res hereditarias ſterdes, aut res quæ ſeruãdo ſeruari non poſſunt, talis alienata non imputantur in Treb. ſed tantum imputatur precium quod ex tali alienatione heres accepit. glo. & Doct. *in d. § res quæ.* ſed iſtæ alienationes factæ ſunt ex cauſa neceſſaria pro diſſoluendis oneribus publicis, nec ex talibus alienationibus heres quicquam percepit aut in eius vtilitatẽ conuerſum eſt, quia dici non poteſt quod per eas fructus ſeruauerit, cum fructus non ſupereſſent. ¶ Tertio dubitatur de fructibus perceptis per Manfrinum ex bonis hereditariis an debeant reſtitui ſubſtitutis. Breuiter dico quod non, ſed cedunt fructus iam percepti per heredem grauatum antequam eueniret dies fideicommiſſi, lucro ipſius heredis. † Imo etiam percepti poſtquam ceſſit dies fideicommiſſi ante moram heredis propter negligentiam fideicommiſſarii non petentis non veniunt in reſtitutione fideicommiſſi. *l. fideicommiſſaria. in prin.* vbi late doct. *ff. ad Trebel.* fructus vero pendentes de tempore mortis Manfrini in bonis fideicommiſſi debent reſtitui ſubſtitutis niſi negligentes in non petendo & percepti fuerint tales fructus ante aliquam interpellationem & ceſſante mora heredis grauati. *d. l. in fideicommiſſaria. & leg. mulier. § ſi heres. eodem titul.* tradit Angel. *in conſ.* 331. *An in reſtitutione. colum.* 2. *in verſic. quartum.* Cornelius *in conſ.* 158. *circa fin. libro* 4. ¶ Quarto † dubitatur circa credita teſtatoris exacta per heredem grauatum, an veniant in reſtitutionem fideicommiſſi? Breuiter reſpondeo quod ſic cum dicantur bona hereditaria teſtatoris. *leg. deducta. in princip. & § 1. ff. ad Trebell.* ſi vero iſta exacta conuerſa fuerint in ſolutionem onerum, ex qua ſolutione nihil conuerſum fuerit in vtilitatem heredis, quia non ſoluerit pro debitis propriis ſed publicis cum fructus non ſuppeterent, idem videtur dicendum in iſtis creditis quod ſupra diximus in alienatis in ſecundo dubio. ¶ Quinto dubitatur, an in reſtitutione fideicommiſſi veniant bona obuenta Manfrino ex ſucceſſione Ioannis Curtius auunculi dicti Manfrini poſt mortem teſtatoris & alia acquiſita per ipſum Manfrinum? Super quo dubio breuiter reſpondeo quod non, quia ſolum veniunt bona hereditaria quæſito iudicio teſtatoris qui fideicommiſſum reliquit, non aliunde obuenta *d. l. fideicommiſſaria. § 1. & 2. ff. ad Trebell.* vbi quod non veniunt fructus percepti poſt mortem teſtatoris & poſt aditam hereditatem, quia nunquam fuerunt hereditarii: ſimiliter ibi habetur quod non venit prælegatum quatenus illud percipitur à coherede, ſed tantum quatenus percipitur à ſeipſo iure hereditario. Ad idem text. *in l. poſtulante. in fin. l. ita tamen. § 1. eod. titul.* in quibus iuribus probatur quod in reſtitutione fideicommiſſi non veniunt non hereditaria licet occaſione hereditatis obuenerint, quanto minus venient non hereditaria non obuenta occaſione ipſius hereditatis, & cum iſta bona obuenta aliunde quam à patre di-

cantu bona propria ipſius Manfrini, nō veniunt in reſtitutione, quia fideicommiſſi bona propria non tenentur. *l. coheredi. §. cum filio. ff. de vulg.* tradit Dec. *in conſilio 55. columna 5. in 2. dubio & alibi ſæpe.* ¶ Sexto quæritur an de tali fideicommiſſo ante omnia detrahi debeant dotes Catharinæ vxoris teſtatoris? Breuiter re-
4 ſpondeo quod ſic tanquam æs alienum, † quia fideicōmiſſum reſtitui debet deducto ære alieno. *l. æris alieni. & l. ſucceſſore.* vbi Bald. *ad legem Falcid.* imo deducitur æs alienum etiam debitum heredi à teſtatore. *l. ab omnib. §. fin. ff. de leg. 1.* quod procedit licet heres non fecerit inuentarium Paulus de Caſtr. *in conſilio 19. Vltra ea quæ ta[illegible] in 2. & 3. dubio libro ſecundo. cum ſim[illegible] in conſilio 144. column. 2.* in quibus dotibus habenda eſt ratio bonitatis monetæ tempore contractus iuxta doct. Bartol. *in l. Paul. ff. de ſolution.* ¶ Septimo quæritur an detrahi debeant de fideicommiſſo legata ſoluta filiabus teſtatoris pro earum dotibus & legitima. Breuiter etiam concludo quod ſic, quia heres non tenetur ſoluere legata de ſuo proprio. Bartol. *in l. Mæuius. §. idem Pomponius. colu. 1. verſ. quæro quid [illegible] teſtator. ff. ad Trebell.* imo ſi heres grauatus reſtituere fideicommiſſum non detraxit legatis per eum ſolutis, poſſet illa repetere à fideicommiſſario. Roman. *in conſilio 276. in 2. dubio.* Calca. *in conſilio 37. columna 4.* ¶ Octauo quæritur an Auguſtina ſoror teſtatoris ſubſtituta nepotibus pro vna parte quæ deceſſit ante Manfrinum nepotem, tranſmiſerit ius fideicommiſſi ad eius heredes. Breuiter dico quod nō, quia fideicommiſſum conditionale non tranſmittitur. *l. vnica. §. ſin autem ſub conditione. C. de cadu. toll.* quod procedit etiam in aſcendente, quia non tranſmittit fideicommiſſum conditionale ad heredes. *l. hered. meo. §. cum ita. ff. ad Trebell. glo. communiter approbata in l. vnica. C. de his quæ ante aper. tab.* Socin. *in leg. Paul. 2. in prin. ff. de reb. dub.* & alibi ſæpiſſime Doct. ¶ Nono dubitatur de capitali, & mercibus relictis in hereditate Matthæi, an veniant in reſtitutione fideicommiſſi, ſuper quo dubio dicendum eſt quod heres grauatus tenetur reddere rationem fideicommiſſario aut ſubſtituto de omnibus mobilibus inuentis in hereditate teſtatoris ac de adminiſtratis & conſumptis. *l. cum tale. §. Titius.* vbi gloſſ. & Doct. *ff. de cond. & demonſt. l. mulier in § ſi heres. & §. ſeq. ff. ad Trebel. cum ſimil.* vt per Alex. *in conſilio 82. col. fin. libro 2. quod eſt repetitum in conſilio 40. libro 5.* tenetur tamen fideicommiſſarius probare talia mobilia relicta fuiſſe per teſtatorem & perueniſſe ad manus heredis grauati vt per Alex. *in d. conſ. 82. col. fin. libro 2.* vbi fortius voluit quod tenetur probare fideicommiſſarius de dominio teſtatoris in talibus bonis, quod idem voluit Alex. *in conſ. 139. col. 3. circa med. libro 6.* Bal. *in conſilio 64. Rei prohibita circa fi. & in conſ. 89. Dominus Thomas Aſinerius libro 1.* Paul. de Caſt. *in conſilio 94. Clarum eſt in vltim. in vlt. dubio. lib. 2.* Alex. *in conſ. 110. colum. penult. poſt med. verſic. ſed dato quod probaretur.* Sed iſtud de probatione dominii videtur intelligendum, quando ageret ſubſtitutus contra extraneum poſſeſſorem, ſecus vbi ageretur contra heredem grauatum, qui non poteſt allegare turpitudinem ſui authoris, & dicere quod defunctus poſſedit bona aliena. Bald. *in conſ. 4. In cauſa Baſilii. li. 4.* Ideo ſaltem teneretur Sebaſtianus ſubſtitutus probare de plena poſſeſſione defuncti de tēpore eius mortis quod teneret & poſſideret alia mobilia. Bald. *in conſ. 352. Materia ſeudorum in ſi. lib. 1.* Si autem dicantur conſumpta talia bona pro oneribus publicis, recurrendum eſt ad ſcripta *ſupra in 2. dub.* ¶ Decimo quæritur, deceſſit Ioannes Amedeus Brici filius Matthæi teſtatoris relictis Catharina matre, Manfrino & Bartholomæo fratribus, ac duabus ſororibus Viuentia & Petrina, qui ſucceſſerint ipſi Ioan. Amedeo ab inteſtato. Dico quod ſucceſſerunt mater, fratres & ſorores æqualiter. *authent. defuncto. C. ad Trebellian.* ¶ Duodecimo & vltimo quæritur, deceſſit Viuentia relictis duobus fratribus Manfrino & Bartholomæo, ac duabus ſororibus, quarum vna quitauerat, qui ſucceſſerint dictæ Viuentiæ. ¶ Reſpondeo, quod ſucceſſerunt fratres & ſoror quæ non quitauit. Circa ſororem quæ quitauit, videndum eſt, an quitauerit etiam bona fraterna cum iuramento, per ea quæ habentur *in l. pactum quod dotali. C. de collat.* ideo non poſſum tute reſpondere, niſi viſis verbis quitationis, & an renunciauerit iura ſua fratribus tantum, aut etiam ſorori. Ex quibus puto ſatisfactum ad omnia dubia. Sauiliani die 7. Iunii 1547. Aymo Crauetta ex Sauiliano. I.V.D.

S V M M A R I A.

1 *Vbi eſt caſus in inſtrumentis, non eſt dubitandum ſicut dicitur de caſu legis.*
2 *Ex antiquitate temporis præſumitur ſolemnitas extrinſeca, tam in iudicialibus [illegible] quam in extraiudicialibus.*
3 *Ex [illegible] præcedentis præſumitur ſequens poſſeſſio.*
4 *Ex [illegible] parte [illegible] vniuerſitatis.*
5 *[illegible]*

CONSILIVM CCCXVII

Pro Magnificis dominis Monaſterolii contra eorum ſubditos.

DIVINO ſubſidio ex corde poſtulato. In cauſa [illegible] iuris venandi inter magnificos dominos Monaſterolii & eorum ſubditos, videretur prima fronte di[illegible] eiusdum [illegible] nem dominorum non eſſe iuſtificatam per [illegible] odu pr[illegible], ſtante oppoſitione ſubditorum, quod non appa[illegible] de mandato compromittentium & tran[illegible] igentium, q[illegible] on videtur præſumi ex antiq[illegible] temporis. [illegible] rum. Baldus *in l. 2. C. [illegible] falſis inſtrument.* & *in l. 1. C. [illegible] non alienand.* ſequitur Alexand. *in [illegible] ff. [illegible] quis in alienam in princip. ff. de acquir. hered. in conſ. 1. columna [illegible] 4. & in conſ. 191. colum. 1. poſt medium. verſic. nec obſtat longitudo temporis. libro 6.* Veronenſ. *in conſ. 26. colum. 6. circa medium.* [illegible] 254. *columna 2. poſt medium. verſic. Præterea non ſumus in caſu [illegible] libro 2.* Decius *in conſ. 205. columna 1. verſic. vlterius tale inſtrumentum.* C[illegible] tius iun. *in 1. part. tract. [illegible] quæſt. 1. colum. 2.* D[illegible] Ne[illegible]po[illegible] *colum. 3. & deciſ. 568. colum. 4. verſi. item allegabatur.* [illegible] mandato communitatis, clarum eſt quod non potuerunt [illegible] qui particulares totam communitatem obligare, q[illegible] teſt quis compromittere de re alterius eo inuito *cap. per [illegible] arbitris.* Gemin. *in conſ. 98. colum. 1.* quod gene[illegible] qualibet materia, vt vnus alium obligare non p[illegible] *pulantem. in 1. 2. & 3. reſponſ. ff. de verbor. obligat. authen. ſi quando [illegible] autem. C. de conſtituta pecunia.* alteri enim per alterum in[illegible] duio afferri non poteſt. *l. non debet. ff. de regul. iuris [illegible] dem tit. lib. 6.* Amplius, licet coniunctus agat pro c[illegible] mandato, ei tamen præiudicare non poteſt niſi commun[illegible] tificet *l. 3. § ſed & ſi forte.* vbi Bartol. *ff. iudic. [illegible] nocet.* Paul. de Caſtro *in conſ. 110. In cauſa [illegible]* & in terminis vniuerſitatis eſt gloſ. *in l. item magiſtri. ff. [illegible]* quod priores ciuitatis non obligant vniuerſitatem [illegible] ſpecialiter aut libere commiſſum, tradit Alex. *in conſ. [illegible] libro 7.* ſi ſi quos cōſtat eſſe priores ciuitatis vniuerſi[illegible] obligant, quanto minus aliqui particulares, de quorum [illegible] publico non conſtat. ¶ Sublata autem efficacia dicta[illegible] ducitur res ad terminos iuris communis, ſed iure co[illegible] venandi ius vnicuique liberum eſt de iure gentium. *l. 1. & [illegible] ff. de acquir. rerum dom. §. feræ igitur. Inſtit. de rerum diuiſ.* ſed [illegible] gen[illegible] tolli non poteſt, etiam à Principe, vt per Bart. & Doct. *in l. [illegible] contra ius vel vtilit. public.* per Canon. *in cap. quæ in eccleſiarum [illegible] rut.* & in terminis quod ius venandi à ſuperiore tolli non [illegible] tradunt Canoniſtæ *in cap. non eſt. de decimis.* Iaſon *in conſ. 119.* ſi Princeps ius venandi tollere non poteſt, multo mi[illegible] rior. ¶ Sed præmiſſis non obſtantibus, quæ vere no[illegible] contrarium puto de iure verius, quod potuerunt do[illegible] bere ſubditis ius venandi vltra & præter formam iu[illegible] actionis: nam intentio dominorum fundatur per [illegible] tum publicum, † ideo dici poteſt, vbi eſt caſus in [illegible] non eſt dubitandum, ſicut dicitur de caſu legis. ita B[illegible] 1
ſi. 215. Proponitur quod inueſtitur 2. colum. 2. circa fin. lib. 2. & [illegible] ſtrumentorum publicum vim definitionis cauſæ. Bald. *in [illegible] ſi. 233. Super inſtrumenta. lib. 1.* & dici poteſt de inſtrumento publico, nihil me tangere. Bald. *in conſ. 249. Super libera. in fin. li[illegible] eſt repetitum in conſilio 400. lib. 5.* dicitur inſtrumentum [illegible] probata. *l. cum ſæpe. de verbor. ſignific.* Bald. *in conſ. 33. Statuto [illegible] lumna 2. in fine. libro 5.* ¶ Vniuerſa difficultas conſiſt[illegible] dendo ad contraria, quibus ſublatis res ipſa clariſſ[illegible] fiat. Ita-que non obſtat quod non appareat de mandato compro[illegible] tentium, quia dico quod illud præſumitur ex la[illegible] ſpo[illegible] ris vltra centum annos. Ita in mandato tenet Ba[illegible] rius *in conſ. 117. in prima. columna fin. lib. 1.* Co[illegible] Sen. *in conſ. [illegible]* quod Bald. *in d. l. 2. C. ex falſis inſtrum.* [illegible] quitur ex [illegible] pu[illegible] lege. Idem quod præſumatur mandatum ex antiqui[illegible] porit, tenet ibi contrarius *in conſ. 1[illegible]9. circa finem.* [illegible] *etiam in mandato. in conſilio 297. colum. 2. in fine. verſicul.* [illegible] *iſta.* firmius idem tenet Decius *in con. 486. colum. fin.* v[illegible] pl[illegible] allegat text. *in l. fin. ff. de vſucap. pro emptore.* & ideo Dec. *in* [illegible] *colum. 2.* Iaſo. *in dicta l. [illegible] colum. 8. verſi. limita.* [illegible] *oblig. & in l. 1. colu. 5. in 2. limit. C. qui admitti.* Cor. *in ſua deciſ. quæſt. 129. col. 5. & quæſt. 281. col. [illegible] in fine.* Sed [illegible] M[illegible] Paul. de Caſt. *in conſ. 84. [illegible] de [illegible] narratione &* [illegible]

circa fin.lib.1. Ad idem facit quod Socin. ſcribit *in conſ.153.colum.1. verſic.ſecundum quod videbatur obſtare.lib.2.* vbi quod ex antiquitate temporis præſumitur pro ſolennitate tutelæ, & tamen tutela idem videtur quod mandatum quod refertur per teſtatorem aut legem. ¶ Et iſta opinio videtur de iure verior, nam Doctor.
2 conueniunt, † quod ex antiquitate temporis præſumitur ſolennitas extrinſeca tam in iudicialibus quam in extraiudicialibus, vt per Dn Ct. *in d.l.ſecundum.ff.de verb.oblig.in d.l.qui in aliena.in pr. ff.de acquir.hered. & in d.l.1.C. qui admit.* In qua re conſidero quod ſufficit lapſus triginta annorum, etiam in præiudicium tertii ad præſumendum talem ſolennitatem extrinſecam. *cap. peruenit de empt.& vendit.* Alex. *in conſ.179.col.3 libro 7.* Soc. *in conſ.254.col.2. verſ. ſed contra præmiſſa videbatur obſtare.& in conſ.270.colu 3. verſ. confirmatur, quia ex quo longiſſimo tempore.libro 2.* Dec. *in conſ. 442.col.5.in prim. verſic.illa præſumptio.& in conſ. 638 col.2. verſic & contra Bald.* *cil regula.* Iaſ. *in conſ.54.colu.5.lib.1.* Gozad. *in conſ.73.colu.5.poſt med. verſic. ſecundo & fortius.* Ideo neſcio videre rationem diuerſitatis inter ſolennitatem mandati & alias ſolennitates, & ſi in ſolennitate extrinſeca præſumenda ſufficit tempus triginta annorum, etiam in præiudicium tertii, quid hic dicemus in tempore vltra annos centum? ¶ Secundo reſpondeo, poſito & non conceſſo, opinio contraria procederet, vt non præſumatur mandatum ex antiquitate temporis, illa tamen non procedit quando in tranſactione, laudo, aut alio inſtrumento fit mẽtio de mandato, quia tunc ſtatur verbis enunciatiuis mandati propter antiquitatem temporis. Dec. *in conſ.36.col.6.verſic.non obſtat,quod in mandatum.* ſequitur Gozad. *in conſ. 11.col.4.* Socer meus Purpuratus *in auth. ſi quis in aliquo documento. in fine. C. de edendo.* Boer. *in ſuis deciſ. Burdegal.quæſt.28.colu. 12. in fine.* Addo vltra eos Bald. *in conſ.112. Quæritur,quomodo intelligantur.col. 2.poſt med. verſic. quæritur vlterius.lib.1.* Veron *in d.conſ. 26. in 1.dub.* & eſt generaliter verum quod ſtatur verbis enunciatiuis in antiquis.gl. & Doct. *in c.cum olim.in gloſſ.1. de cenſibus.* And. de Butr. & Dn Ct. *in c.ap.ſi. de ſucceſſ.ab inteſt.* Bald.& Doct. *in l.cum aliquis. C. de iure deliber.* ſed in caſu noſtro fit mentio in laudo & tranſactione, imo enunciatur tempus ipſius mandati per annum & diem cum expreſſione nominis Notarii, ergo, &c. ¶ Tertio reſpondeo, poſito citra præiudicium veritatis, procederet opinio contraria quod non præſumatur mãdatum ex antiquitate temporis, illa tamen non procedit concurrente quaſi poſſeſſione & diuturna patientia, quia tunc præſumitur mandatum ex lapſu triginta annorum. Alex. *in conſ. 1.col pen.lib.4.* Brun. Aſten. *in conſ.96.col.1.poſt med.* ſed hic domini Monaſterolii ſemper fuerunt & ſunt in poſſeſſione percipiẽdi linguas boum & vitulorum qui mactẽtur ad macellum ex titulo dictæ tranſ-
3 actionis: † quia præſumitur ſecuta poſſeſſio ex titulo præcedenti. *l. quædam mulier.ff.de rei vendic.* *ad l. 2. C.de acquir.poſſ.* a primordio enim tituli poſterior formatur euentus. *l. 1. circa fi. C.de tempo. in integ.reſtit.lib.10.* in qua perceptione linguarum cõmunitas Monaſterolii nunquam ſe oppoſuit. Imo nouiſſimo domini Monaſterolii obtinuerunt ſententiã ſuper dictis linguis apud magnifico dominos Iudices appellationum contra duos laniſtas aut macellarios, nec tamen comparuit communitas in eo iudicio aduerſus ipſos dominos, & ſic conſtat de patiẽtia communitatis in iudicio & extra. ¶ Non obſtat aſſertum poſſeſſorium venandi contra formam dictæ tranſactionis, quia reſpondeo quod cum ius venationis competat ſolis dominis priuatiue ad ſubditos, quatenus prohibẽtur ſubditi venari per ipſam tranſactionem, & ius venandi habeat cauſam diſcontinuam, non potuerunt ſubditi præſcribere contra ipſam tranſactionem, niſi per tempus, cuius initii memoria non extat in contrarium. *l. 1. §.denique.ff.de aqua pluu.arcen.l.hoc iure.§. ductus aquæ.ff.de aqua quotid. & æſtiu.* *al not.in l.ſeruitutes.in gl.ff.de ſeruit.* Alex. *in conſ.108.col.2.circa med.lib.2.* ſed de tali tempore teſtes non deponunt. ¶ Secundo reſpondeo, quod talis poſſeſſio videtur vitioſa & cum mala fide, cum non ignorarẽt ſubditi talem tranſactionem, ſed poſſeſſio vitioſa & cum mala fide non releuat. *l. communi diuidundo. §.inter,ff.adum.ff.commun.diuid.l....& l.ſi duo.* vbi Bart. *ff.vti poſſid.l.filium fratr.ff.ad l reb.* Oldr. *in conſ. 109. In cauſa hoſpitalis.colu.2. in verſ.fin.ex quibus ſolum patet.& in conſ. 226. Quidam Epiſcopus.circa fin.* Feder. de Senis *in conſ.147. Quidam de ciuitate Tudertis col 2.poſt med.* Bal. *in conſ. 340. Statuto cauetur quod conductor.in fin.lib. & in conſ.137. Statutum. lib.5.cum ſimil.* ¶ Tertio reſpondeo, poſito & non conceſſo, probatum eſſet de poſſeſſorio temporis antiquiſſimi, cuius initii memoria non extat in contrarium, *iuxta not.in cap. 1. de præſcript. lib.6.* & quod talis poſſeſſio venandi contra formam tranſactionis vitioſa non eſſet, tamen talis poſſeſſio non prodeſſet communitati Monaſterolii, ſed tantum particularibus, qui ita venati eſſent, † quia ex poſſeſſione particularium ius non acquiritur vniuerſitati, niſi fiant actus poſſeſſorii nomine ipſius vni- 4
uerſitatis, vel de eius mandato, per liberam enim perſonam alteri non acquiritur, non præcedente eius mandato. *l. ſi ego ff de neg.geſt l.1.§.per procurat.& l.poſſ.§ & ſi poſſ. ff. de acquir.poſſ.* & in terminis quod ex poſſeſſione particularium non acquiratur vniuerſitati, tradit Bal. *in conſ. 438. Præmittendum eſt ad euidentiam,quod quandoque. lib.1.* Socin. *in conſ.95. colum. pen verſi. quod autem poſſeſſio. libro 3.* Corn. *in conſ.130.colum fin.in conſ.148.circa fin.in conſ. 199.colum.3.lib.1.in conſ. 46.colum 1. lib.4. & in conſ.63.libro 4.* Dec. *in conſ. 215.colum final & in conſ 221 colum.5. verſi.ſimiliter non probatur.* Ioan. Ant. Rub. Alex. *in conſ. 4. in fine.* oportebat igitur probare quod communitas Monaſterolii mandaſſet talibus particularibus, vt venarentur nomine ipſius communitatis, puta pro offerendo aliquo munere ſuperiori, aut aliis bene merentibus, vel quod tales particulares ita venati eſſent nomine ipſius vniuerſitatis. Si enim particulares venati ſunt pro eis & ad eorum vtilitatem, ex talibus actibus nihil videtur quæſitum vniuerſitati, quia † actus noſtri voluntarii non extenduntur vltra quam
geruntur. *l.1.§.Iul.* vbi Bart. *ff. de itinere actuq.priuat.l.voluntarie. C.de* 5
excuſ.tut.l.ſi. C.ne vxor pro marito.cum ſimil. & quod actus factus nomine vnius non extendatur ad alios, eſt te... *in l.ſi vt proponis, arguendo a ſpeciali. C. de reſcind.* Imo etiam ex contractu facto nomine ſuo proprio ſocio non acquiritur etiam quod acquirat ſocius de pecunia communi, vbi eſſet ſocietas omnium bonorum. *l.ſi patruus.* vbi Bart. & Bald. *C.commun vtriuſque iudic.cum ſimil.* vt per Alex. *in conſ. 8.lib.1.* Corn. *in conſ.167.lib.1.* Mod *in l. ſocius.ff.ſi cert.pet.* ¶ Rurſus patientia dominorum, qui dicuntur paſſi aliquos particulares ſubditos venari vltra aut cõtra formam tranſactionis, non debet trahi aut extendi extra limites ſuos ipſius patientiæ ad totam vniuerſitatem, aut ad omnes de vniuerſitate, quia patientia limitata ad aliquos ad alios extendi non debet. *l.iubemus.C.ad Vell.& c.Titius cum Sempronio.ſi de feud.fuer.controu. inter dom.& agn.* Alex. *in conſ.1 col.11.lib.5.* Iaſ. *in conſ.107.colum. 4.poſt med.lib. 4.* Etenim poterant domini tolerare aliquos ſubditos amicos venari, non æque tolerarunt omnes de vniuerſitate. Saluliani 21. Iunii 1547. Aymo Crauetta ex Saulliano I. V. D.

SVMMARIA.

1 *Res ſemel diuiſa amplius diuidi non poteſt, non exiſtente cauſa diuiſionis.*
2 *Actus conſtituendi officiarios ſeparatim fieri non poſſunt citra diuiſionem iuriſdictionis.*
3 *Quando aliquod factum damnoſum alicui eſſe poteſt, ex facto partis argumentum ad factum totius.*
4 *In materia præſumptionis magis præſumitur pro plus operante.*
5 *Diuiſio ſubditorum ipſis fieri non poteſt.*
6 *Innocentia principum eſt nemini iniuriam inferre.*

CONSILIVM CCCXVIII.

Pro illuſtr. dom. Io. Ant. de Salucis domino Prati de leues, & condomino Montis oroxii contra illuſtr. dominum Ioan. Federicum de Salucis dominum Montis mali & condominum dicti loci Montis oroxii, conſilium non vulgare in materia diuiſionis iuriſdictionis.

DIVINO ſubſidio ex corde poſtulato. In cauſa illuſtr. domini Ioan. Antonii de Salucis domini Prati de leues, & condomini Montis oroxii contra illuſtr. dom. Ioan. Feder. de Salucis dominum Montis mali, condominum Montis oroxii Marchionatus Saluciarum, in qua quæritur de diuiſione iuriſdictionis dicti loci Montis oroxii, videretur prima fronte dicẽdum iuriſdictionem diuidi poſſe per diuiſionem ſubditorum, vt vnuſquiſque habeat ſuos ſubditos ſeparatos, quando agitur de feudo inferiori non habente dignitatem annexam. quæ dignitas conſideratur in feudo Ducatus, Marchionatus & Comitatus. Ita in feudo inferiori tradit Andr. de Iſer. *in cap.imperialem. §.præterea ducatus.de prohib. alien.feud.per Feder.cum ſimil.* vt per Alex. *in conſ.25.colum. 4.verſic.non obſtat,quod alia feuda. lib.5.* Socin. *in conſ. 67. Viſis inueſtituris colum.12.lib.1.& in conſ. 78.colum.2.in 2.qu.lib. 2.* Dec. *in cap.prudentiam.in princ.colu. 5.verſic. vlt. notandum. de offi. deleg.* Iaſ. *in l.ſtipulationes non diuiduntur.colum 10. verſ. ſed aduerte pro magna limitatione.ff de verbor.oblig.* & iſta diuiſio fieri poteſt aliquo de ... bus modis. Primo diuidẽdo adminiſtrationem aut ... alternis annis, quod vnus adminiſtret vno anno & alius alio.

Secundo diuidendo territorium, quod vnus exerceat iuriſdi-ctionem vſq; ad talem locum & alter in reliquo. Tertio ſi ſint plura caſtra aut loca ſingula ſingulis adiudicando. Ita Soc. *in d. conſ. 67 colum. 13. lib. 1.* Itaque audiendus videtur dom. Montis mali, ſi feudum aut iuriſdictionem velit diuidere per territorium adiudicando partem territorii vni & partem alteri, & cum talis diuiſio magis pertineat ad euitandas diſcordias, illa videtur leuiſſima & recipienda *arg. l. Lequiſſimum ff. de vſufruct.* Etenim cauſa diuiſionis non alia fuit quam vt diſcordiis obuiam eatur. *l. in re communi. ff. de ſeruit. vrban. præd. l. cum pater. § dulciſſimis. ff. de leg. 2. l. ſancimus. § ſin autem. C. de donat.* ¶ Sed præmiſſis non obſtantibus contrarium puto de iure & æquitate verius ſubſequentib. fun-
1 damentis. Et primo conſidero, † quod res ſemel diuiſa amplius diuidi non debet, non exiſtente cauſa cur diuiſio facta retractari debeat. *l. ſi maior. quæ eſt l. pen. C. comm. diuid. l. ſi inter. C. comm. vtr. iud.* [illegible] *facit text. in l. ſicut. C. de act. & oblig.* Quod autem iuriſdictio diuiſa ſemel fuerit, probatur iuris præſumptione, nam pars fatetur diuiſionem caſtri Montis oroxii, molendinorum, & omnium, excepta iuriſdictione, quam modo vult diuidere. Sed dico quod etiam iuriſdictio diuiſa eſt per viam diuiſionis exercitii aut adminiſtrationis, nam modus diuidendi iuriſdictionem feudi inferioris cæteris laudabilior eſt per diuiſionem exercitii aut adminiſtrationis, vt ſupra dictum eſt, & adeo commendatur talis modus diuidendi quod ſecundum Abb. *in d. cap. prudentiam in princ. de offic. deleg. & in conſ. 71. lib. 1.* niſi in feudo ſint plura caſtra quæ diuiſionem commodam recipiunt feudum diuidi non poſſit, niſi reſpectu commoditatis, vtendo iuriſdictione alternis annis: idem voluit Ang. *in l. 2. § ex his ff. de verb. oblig.* Alex. *in conſ. 7. col. pen. verſi. confirmo praducta lib. 5.* Curt. Sen. *in conſ. 69. colu. 5. in prin.* Sed vltra tantos patres adduco text. *in l. & puto. § 1. ff. famil. erciſc. & in l. ſi quis put. ins. § officio ff. comm. diuid.* & vbi in iudicio diuiſorio iudex poteſt adiudicare vni fundum, & alteri vſumfructum ipſius fundi quando commoditas diuidendi ita præſcribit & monet. Ecce quod valet diuiſio per quam in eadem re vnuſquiſq; ſociorum ius habet, videlicet vnus proprietatem, & alter vſumfructum, quanto laudabilior videtur diuiſio de qua agitur, & licet contra opinionem Abb. Doctor. aliqui teneant, non tamen negant quin ad eum modum diuiſio iuriſdictionis fieri poſſit & debeat licet dicant quod ét alio modo fieri poſſit. Itaque cum iſte modus diuidendi iuriſdictionem per viam exercitii & adminiſtrationis cæteris videatur potior, æquior & honeſtior, & ipſi domini conſortes & eius prædeceſſores poſt diuiſionem caſtri, molendinorum & aliorum ſemper exercuerint iuriſdictioné alternatim deputando & conſtituendo Caſtellanos alternis annis, dicendum eſt quod ad eum modum iuriſdictionem diuiſam eſſe voluerint, ſicut dicitur de pluribus fratribus aut ſociis poſſidentibus longo tempore bona diuiſim & ſeparatim quod præſumitur inter eos facta diuiſio. gl. & Doc. *in l. pen. in gl. 1. C. com. diuid.* Bart. & Doct. *in l. qui in aliena in fin. in princ. ff. de acq. hered.* Bald. *in conſi. 4:* *Quædam puella in fin. libr. 1.* Alex. *in conſi. 92. column. 1. lib. 2.* Felin. *in cap. ſicut. col. 14. in 5. fall. de re iud.* Dec. *in conſ. 80. in 3. dub.* Iaſ. *in l. ſi certis annis. col. pen. C. de pact. & in § quædam. colu. 6. poſt med. inſt. de act.* ¶ Secundo quod præſumi debeat diuiſionem eſſe factam iuriſdictionis ex illo vſu antiquiſſimo conſtitutionis officiariorum alternis annis, apparet, quia niſi intendiſſent prædeceſſores litigantium ad eum modum iuriſdictionem diuidere, vtique non alternis annis ita vſi eſſent, ſed communiter ſemper & ſimul officiarios conſtituiſſent ſeparatim: igitur conſtituendo alternis annis non obſcure arguitur voluntas vtentium, quod ad eum modum iuriſdictionem diuidere volue-
2 runt. *l. Paul. reſpondet non tantum verbis. ff. rem ratam haberi.* Iſti † enim actus conſtituendi officiarios ſeparatim & diuiſim fieri non poſſunt citra diuiſionem iuriſdictionis, ergo ex eis diuiſionem factam eſſe dicendum eſt, ſicut dicitur de aditione hereditatis, quod inducitur ex actibus qui fieri non poſſunt citra ius & nomen heredis. *l. pro herede. in princ. & § Papinianus. & l. ſi quis mihi bona. § quid ſi mandaui & l. gerit. ff. de acq. her.* Similiter renunciatio iuris ſui inducitur ex actibus qui fieri non poſſunt citra ipſam renunciationem. *l. Tutum. ff. quib. mod. pign. vel hypoth. l. 1. l. fin. C. de pact. dot. cap. literas. de præben. cap. 1. de conſuet. lib. 6. cum ſimil.* ¶ Sed dicet aliquis, iſti actus conſtituendi officiarios ſeparatim alternis annis non inferunt neceſſario diuiſionem iuriſdictionis quo ad proprietatem, ſed ſolum reſpectu adminiſtrationis, ergo de adminiſtratione ad proprietatem non [illegible] arguendum tanquam ex ſeparatis. *l. fin. ff. de calumnia. l. Papinianus exulem. ff. de minor. cum ſimil.* Reſpondeo quod argumentum forte procederet quando & alia bona diuiſa non eſſent, ſed ex quo omnia diuiſa [illegible] ſolum prætendit pars iuriſdictionem diuiſam non eſſe [illegible] dum eſt quod etiam iuriſdictionem ad eum modum voluerint, cum ille ſit potior, honeſtior, & laudabilior diuidendi iuriſdictionem, qui inueniri poſſit quando ſi [illegible] caſtrum vnum tantum conſtat, ne alius vnus & idem [illegible] uerſo iure cenſeatur, id eſt, pro parte diuiſus, & pro parte [illegible] uiſus. *l. enim qui ædes. ff. de vſucap. cap. quia circa. de priuileg. & cap.* [illegible] *de decimis.* ¶ Secundo reſpondeo, quod ex quo præ[illegible] litigantium venerunt ad diuiſionem caſtri molendinorum & aliorum, dicendum eſt, quod ideo venerunt ad diui[illegible] in communione ſtare nollent, aut non poſſent, tanquam [illegible] tinua diſcordiarum, ex diuiſione igitur aliarum [illegible] dum eſt, præſumi factum eſſe diuiſionem iuriſdictionis re[illegible] ctu proprietatis, ne alias communio iuriſdictionis d[illegible] pareret, nam † quando aliquod factum damnoſum alicu[illegible] poſſet, ex facto partis arguitur ad factum totius. Bart. *in l.* [illegible] *bus. & in l. ſi ita cum res. ff. de leg. 2.* Decil. Neap. *deciſ. 13. in. 21.* ſtringo [illegible] tius iſtud argum. nam ſi ex facto partis tantum non appareat [illegible] de altera parte in aliquo arguitur ad factum totius, qu[illegible] cemus vbi apparet de facto totius? nam apparet de [illegible] & [illegible] ta diuiſione ædificii caſtri quod vni in ſol[illegible] dum fuit aſſign[illegible] aut adiudicatum, apparet de diuiſione molendinorum & al[illegible] rum, apparet etiam de iuriſdictione quod circa eius e[illegible] conſtituuntur Caſtellani ſeparatim ſingulis anni[illegible] bitatur an iſta conſtitutio Caſtellanorum facta [illegible] diuiſionis omnimodæ, facilius igitur præſumi debet [illegible] clarationem aut qualitatem actus quam circa ſubſtantiam *in l. ſalus ſcriptura. § fin. ff. de legat. 1. & in l. cum quis. § ſi quis pro eo. ff. de lib.* Iaſ. *in l. ſtipulatio iſta. § alteri. col. 6. de verb. oblig. & in l. Gallus. § ſi forſitan. col. 5. ff. de lib. & poſth.* ¶ Tertio reſpondeo, quod in materia 4
præſumptionis magis præſumitur pro plus operante, ob id quia cauſa naturalis eſt fortior accidentali, magis præſumitur pro cauſa naturali. *l. qui habet. ff. de tutel. cap. 2. de conuer. in fid.* Itaque [illegible] vſus iuriſdictionis antiquiſſimus per alternos annos præſumi debet factus ex cauſa diuiſionis omnimodæ & magis operatiuæ, non etiam ex cauſa diuiſionis (vt ita dixerim) per modum prouiſionis, ſemper enim præſumitur pro eo quod [illegible] potest. Bald. *in cap. 1. in tit. de controuerſ. inter maſcul. & femi. arg. l. domnus. ff. de contrah. empt.* & idem Bald. *in cap. quia verisimile de præſumpt.* quod Baldi dictum refert [illegible] Calc. *in conſi. 11. colum. 3. circa med.* Ad idem adduco Alex. *in l. ſi ſeruus. § ſi numerus. colum. 2. in fin. de legat. 1.* vbi quod in dubio cenſetur quis actum facere eo modo quo efficacius poteſt. ideo in dubio cenſetur quis pronunciare vt arbiter, non vt arbitrator, quia ſententia arbitri [illegible] efficacior. Dicendum eſt igitur diuiſam fuiſſe iuriſdiction[illegible] prout efficacius potuit. ¶ Quarto reſpondeo, vbi [illegible] a deputatio Caſtellanorum ſeparatim per annos alternos duobus modis fieri potuerit, vno modo per viam prouiſionis, altero per [illegible] plenę diuiſionis, in dubio dicendum eſt eam factam fuiſſe prout vtriq; parti vtilius erat. Alex. *in conſi. 55. colu. 2. ante medium. & col. 5. poſt medium. verſ. Quarto reſpondeo lib. 5.* Sed diuiſio iuriſdictionis per viam exercitii aut adminiſtrationis alternis annis in[illegible] ceteros modos diuidendi commendatur tanquam vtilior [illegible] or, nobilibus dignior, & minus habens odii & inuidiæ [illegible] vnum tantum conſtat caſtrum. ¶ Quinto reſpondeo, poſito [illegible] quod [illegible] lis diuiſio dicatur facta ſolum reſpectu exercitii & adu[illegible] tionis iuriſdictionis, non reſpectu proprietatis, tamé dominus Ioan. Anton. adhuc habet intentum ſuum, quod diuiſio [illegible] ctionis facta reſpectu exercitii & adminiſtrationis reuocari nó debeat, & altera de nouo fieri reſpectu proprietatis, quia vt dictum eſt ſupra circa diuiſionem iuriſdictionis, doctor. dant tres modos diuidendi, vnum ſuper cæteros reſpectu exercitii & adminiſtrationis, ſeu reſpectu commoditatis ipſius iuriſdi[illegible] onis. Itaq; cum iſte modus diuidendi à doctoribus [illegible] probatur & [illegible] ſortib. vnius caſtri electus fuerit, quod ſemel placuit, amplius diſplicere non debet. *reg. quod ſemel lib. 6.* & ſufficit quem ſemel luiſſe. *l. in diem. ff. de aqua pluuia arcen.* & via quam elegiſti [illegible] bi patet. *leg. ſi mulier. in fin. ff. quod metus cauſa. ca. vt quos duas dedicet. capitulo vnico. de poſtula præla. libr. 6.* & maxime hoc procedit cum [illegible] fuerit via per antiquos & candidos prædeceſſores quæ [illegible] dominos & nobiles ex ſanguine principali tantopere à doctor. commendatur, cuius ipſius viæ variatio ad indignatio[illegible] odium & inuidiam pertinet, potius quam ad amicam [illegible] [illegible]

[illegible] dicat in [illegible] n. An [illegible] teilem [illegible] verſantur circa diuiſ [illegible] in vn us caſtri quod pat [illegible] nt doct. illum modum [illegible]

[illegible] te diuidere iuriſdictionem [illegible] quo [illegible] tum proced [illegible] iam in materia odioſa. *l. quis indi-gnum.* [illegible] vbi Bart. *ff. de adul.* [illegible] *illorum. de ſentent. excommun.* ¶ [illegible] ter, pu ito & non conceſſo, iuriſdictio diui-[illegible] eſſet [illegible] reſpectu exercitii au [illegible] tationi, adhuc talis diuiſio non poſſet ad modum [illegible] per D. Io. Federicum, [illegible] vt diuidantur ſubditi ſimul cum territorio Montis oroxii, ita quod vnus habeat ſub-ditos in tali parte territorii, & alter in alia parte, quia dicitur quod ſubditi proteſtati ſunt coram Excellentia Marchionali, quod non intendunt habere duplicem caſtellanum neque duplicem vniuerſitatem. ¶ Quæ ipſa proteſtatio iuri videtur conformis arguendo a [illegible] hoc modo, nam dominus non po [illegible] conditionem ſubditorum deteriorem alienando eos inuitos. *c. 1. § præterea ducatus. de prohi. alie. feudi per Feder. gl. ſing. in l. mutus. ff. de [illegible] lib.* Spec. *in tit. de feud. § ſponſam. verſ. 29.* Bald. *in cap. 1. § ſi quis m[illegible] nota pro temp [illegible] in cap. 1. circa [illegible] de reſti. ſpol. & l. in teſtamento. C. ad legem Falcid. in conſilio 324. Quæritur vtrum* [illegible] *columna 2. in conſilio 32[illegible]. Rex Rom. [illegible] columna 2. libro 1. & in conſi. 410. Quæritur vtrum dominus. columna 3. circa princ. libro 5.* Hoſt. A[illegible] b. & [illegible] *in cap. dilecti. de maio. & obedien.* Paulus de Caſtro *in conſ. [illegible] columna 3. poſt med. libro 1.* Curt. Senior *in conſilio 66. columna 13. in prima.* Socin. *in conſilio 39 colu. 3.* Dec. *in cap. 1. colu. 4. de probat.* [illegible] *in conſil. 689. colum. fin. poſt med.* Iaſ. *in l. debitorum. colum. 2. poſt med. C. de pact. in conſi. 56. lib. 1.* [illegible] *in conſ. 22[illegible] colu. [illegible] lib. 2.* Curtius Iun. *in conſi* [illegible] *colum. 4.* late Ripa *lib. 2. reſponſ. de reſcript. cap. 25.* Imo do-minus [illegible] ſubditos multo priuari debet proprietate eo-rum. Cur[illegible] Iun *in d. conſi. 1[illegible] col. penult.* ſi non poteſt dominus in totum [illegible] omnes ſubditos inuitos, multo minus pote-rit eos ab inuicem ſeparare & diuidere vt habeant dominos & Iudices ſeparatos, vt habeant vniuerſitates ſeparatas, per quam ſeparationem conditio ipſorum non paulo fit deterior, atque per ſimplicem alienationem: nam duplicitas Caſtellanorum & officialium non poteſt damnum non inuehere, iuxta illud vulgatum, Sole oecor ſolo, quid [illegible] alter. Quod ma-xime procedit in villa breui & modica, in qua pro monſtro vi-detur quod habeat duo capita ſeparata [illegible] reſidentia. Ideo vi-demus quod eadem diœceſis non debet habere duos Prælatos, aut duos Epiſcopos. *cap. quoniam in pleriſque. de offi. ordin.* Gemin. *in conſi. [illegible]8. colu. 2. circa med.* & ſola experientia docet, quod maiora grauamina ſuſtinerent ſubditi, etiam in re pecuniaria à duobus Officialibus quam ab vno, non modicum etiam ſuſtinerent in-commodum ex ſeparatione conſilii aut vniuerſitatis tam in ſen-tentiis reddendis per conſilium publicum quam ex multipli-citate Syndicorum & aliorum Officialium quibus [illegible] ta conſtituuntur. ¶ Et pro hac opin. quod ſubditi inuiti diuidi nõ poſſint [illegible] vn [illegible] altro, adduco Alex. *in conſi. 25. col* [illegible] *in quo loquitur Angel. lib. 5.* vbi Alex. poſt Ang. [illegible]

[illegible] tanta [illegible] [illegible] in M[illegible] [illegible] ipſos [illegible] pro ſubditis [illegible] C. de [illegible] [illegible] ſuccedimus. de [illegible] in periculum [illegible] Ide[illegible] imo ex nouitate [illegible] antiquam conſuetudinem [illegible] & quæſitio vt dictum colum. 1. ¶ Sed [illegible] der. nõ id quæritur [illegible] torum, qui [illegible] rum, Syndicorum & aliorum Officialium [illegible] niuerſitate [illegible] tur iuriſdictione [illegible] neat vniu [illegible] ¶ Reſpondeo quod [illegible] go petit rem impoſſibilem, nam ſi eccl [illegible] Caſtellanus al [illegible] dominis conſtitutus ſub [illegible] omnibus [illegible] peteret, ergo [illegible] ctio nece[illegible] mancbit indiuiſa, duplici reſpectu. P[illegible] ſi [illegible] conſtituatur Caſtellanus ab vtroque domino [illegible] conſtitutum eiuſdem Caſtellani [illegible] qu [illegible] poteſt [illegible] nec videri pro [illegible] parte diuiſionem Caſte[illegible] & pro quo[illegible] [illegible] libet minimi [illegible] tem habeat [illegible] indiu[illegible] *leg.* [illegible] *duobus* [illegible] *leg.* [illegible] do qui Caſtellanus conſtitutus ab vtroque domino [illegible] ſubditis [illegible] Caſtellanus [illegible] per alterum dominum [illegible] ctio & poteſtas [illegible] ¶ Sed dices al[illegible] do quod ille Caſtellanus ſimul & communiter [illegible] vtroque domino [illegible] omnes ſubditos [illegible] hoc mo-do, qui [illegible] Caſtellanum contra eos ſubd[illegible] & ſic iſte Caſtellanus [illegible] bit vices duorum Caſtellanorum. Reſpõdeo, quod [illegible] id repu-gnat naturæ diuiſionis [illegible] diuiſio perp[illegible] certas aut limi[illegible] non in [illegible] *ſtit. de offi. ord.* Ita [illegible] indiuiſum naturâ diuiſionis [illegible] quiſ-que aut [illegible] Caſtellanum conſtitue [illegible] partem, au[illegible] [illegible] in tribut [illegible] ratio [illegible] [illegible] diuidi, qui [illegible] non poſſ[illegible] Caſtellanus ab [illegible] dom[illegible] [illegible] beret. [illegible] *compet. iudic. per totum.* ¶ [illegible] diuiſ[illegible] ſubditorũ a [illegible] bu[illegible] diſcrimen d[illegible] tea [illegible] aut diſſicillime [illegible]

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in Conſtitutione Caſtel[illegible]ni. Imo alter ſu[illegible] minatum ab altero, & [illegible] q[illegible] lgo [illegible] in contraria cu[illegible]run & [illegible] aud[illegible] diſcordiæ ubditis [illegible]itis, qui[illegible] perat [illegible] per annos alternos [illegible] ſeparati [illegible] tis, quia dice[illegible] o[illegible] m[illegible]lo quod C[illegible]ellanus [illegible] ſubditis meis [illegible] d m[illegible]. ¶ [illegible] ndeo quod [illegible] modus diui[illegible] probatur per Doct. Hoc modo con[illegible] D[illegible] circa modum diuidendi conſiderantes tres [illegible] emoratos, inte quos non reperitur iſte m[illegible] t ſi [illegible] ubditorum quibus imperetur & ius dicatur pe[illegible] num C[illegible] adm[illegible] adnitti nō debe[illegible] ſimili argu[illegible] nt[illegible] *in l. patre furioſo. ff. de his, qui ſunt ſui vel alieni iuris.* vbi quod fu[illegible] ſuperueniens non lib[illegible] à patria poteſtate, quia iſte modus lib[illegible] andi non reperitur *in tit. quibus modis ius patriæ pote. ſolu.* & profecto iſte modus diuidendi probabilis aut rationabilis v[illegible] veriſi[illegible] ſimiliter à Doct. c[illegible] ideratus. Ideo autem conſideratus non eſt, quia nou[illegible] & ind. [illegible] maioris diſcordiæ [illegible] am ipſa c[illegible] nio. ¶ [illegible] is clare explicata videtur praxis difficultas. Solum ſu[illegible] ad contraria reſpondere quæ ipſ[illegible] licet [illegible] videntur per[illegible] dicta diſſoluta. Reſpondeo tamen in ſpecie ad [illegible] claritionem, [illegible] quod feuda inferiora [illegible] iones diuidi poſſunt, ſed dico quod hic diuiſia ſemel facta [illegible] ſupra abunde probauimus, ob id amplius fieri non debet. ¶ [illegible] reſpondeo quod vbi iuriſdictio diuiſa non eſſet [illegible] um veritatis, tamen ex quo agitur de iuriſdicti[illegible] tantum non poteſt fie[illegible] diuiſio per ſeparatio[illegible] ipſis [illegible] autem appatent, dum non[illegible] Caſtellanorum, & vniuerſitatum, vt ſupra probauimus. Ideo ſupereſt vnus tantum modus [illegible] dendi pe[illegible] diuiſionem vſus, exercitii, aut adminiſtrationis, qui ipſe modus comprobetur & commendetur à Doct. ſuper alios mod[illegible] vt ſupra oſtendimus, a principe ipſo non debe[illegible] omitti: nam [illegible] princeps ſeruare ſummam honeſtatem & ſummam æquit[illegible] em tanquam regulas, qui[illegible] ratio à capite edi debet. Bal. *in conſ.* [illegible] *Factum ſic proponitur. col. 3. poſt med. lib. 4.* & debet princeps cle[illegible] & benignitate ſplendere *l. imperialis. C. de nuptiis. l. fi. C. de donatio. inter vir. & vxor.* ſed nu[illegible] la clementia aut benignitas, ſi adm[illegible] diuiſio ad votum partis inductiua admirationis & nouita[illegible] contra morem antiquiſſimum, nutritiua maioris di[illegible] odiiac inimicitiæ amplificatiua, cum oporteat actum princip[illegible] ab omni malitia & [illegible] minutione alienum eſſe & extraneum. *§ illud. in auth. conſtit. quæ de dignitat.* Bal. *in conſ. 24. Ius Abbatialis lib.* [illegible] à principe maxime debet eſſe remota. *leg. ex facto ff. de vulgar. leg. 1. § permittitur. ff. de aqua quoti. & æſtiua. l. meminerint. C. vnde vi.* ¶ † Innocentia enim prin[illegible] um e[illegible] nemini iniuriam inferre *c. ſapiens. 6. quæſt. 1.* & [illegible] eſt C[illegible] anæ religioni lenitas [illegible] manſuetudo cui eſt contra[illegible] crudelitas *ca. ninium ſolum. 23. quæſtio. 5.* Geminia. *in conſ. 96. colum. 4. circa med.* ſed ante Geminia. illa retulit Oldr. *in conſ. 216.* ¶ Poſtremo in re dubia quæ ipſa tamen clariſſima videtur in [illegible] orem domini Ioan Anto[illegible] eligi via debet quæ vtriq; part[illegible] is ſit præiudicialis. Paul. de Caſt. *in l. 1. in prin ff. ſi quis cautio.* & [illegible] Iaſ *col.* [illegible] *3. poſt me[illegible].* Dec. *in conſil. 162. col. 1.* [illegible] ddo Bald. *in conſ. 19* [illegible] *reperitur quod in quadam ciuitate. col. fin. lib. 2* ſed ita d[illegible] iuriſdi[illegible] per viam exercitii aut adminiſtrationis d[illegible] p[illegible] ta[illegible] Caſte[illegible] ano[illegible] alterni[illegible] nus grauis & onero[illegible] tur vtriq; parti, & c[illegible] Doct. recipiunt & [illegible] mendant, [illegible] alter [illegible] pa[illegible] ingend[illegible] caſionem diſcordiæ, & nihi[illegible] talem p[illegible] æteritum ac[illegible] idiſſe proban[illegible] o, prout [illegible] po[illegible] ac[illegible] dere ex [illegible] ipſiu[illegible] diuiſionis: nam circa co[illegible] Caſtell. notu[illegible] occaſio rixæ aut diſ[illegible] rdiæ, quia v[illegible] uſ[illegible] ue m in ſ[illegible] dum conſtit[illegible] ad arbitrium, & libere alternis [illegible] Ruſus ci[illegible] ca perceptionem emolumentorum nul[illegible] de[illegible] io diſcordiæ, q[illegible] emolumenta ipſo iure d[illegible] vnuſ[illegible] m ſuam di[illegible] & [illegible] *l. ea quæ.* [illegible] *ſamil. erciſc.* Sim[illegible] comunione ſub[illegible] no occaſi[illegible] mo vnio ſubdito[illegible] eſt, q[illegible] d[illegible] enim non poteſt vnio [illegible] m[illegible] deſluat, tan[illegible] me nbi[illegible] mb[illegible] um ſpectat ad ornam[illegible] apitis. *l. qui ex tuo. ff. ad munic.* [illegible] *in l. Prætor ait. § deinde. col. 2.* [illegible] *de oper. noui nunc.* [illegible] im ſubditorum reputatur [illegible] odum d[illegible] *vnus art.* [illegible] *ff. de adme. toll.* & theſaurus P[illegible] tur [illegible] ſe[illegible] bentes. *§ cogitatio. in auth. vt iudic*

ſine [illegible] *l. C. d. omni.* [illegible] mu[illegible] excel[illegible] tori[illegible] hab[illegible] [illegible] mpl[illegible] & [illegible] cau[illegible] thuus, [illegible] m[illegible] S[illegible] 1547. [illegible] Crauett. ex S[illegible] ano. [illegible]

SVMMARIA.

1 *[illegible] ndubio doli [illegible] tur.*
[illegible] reſtituat.
Qui [illegible] tanquam [illegible] rebelle, fac[illegible]
4 *Autumn[illegible] ſ[illegible] adol[illegible].*
Idem e[illegible] metus & [illegible] per[illegible] cuſ[illegible] culum.
6 *Præſumptio doli ceſſat ratione ſanguinis & con[illegible]*
Con[illegible] inſpici debet, non ipſum factum
8 *Ex [illegible] pot ſtatione in aliquo qui non dicitur d[illegible] rem.*
9 *Nu[illegible] ans aq[illegible] aratur.*
10 *Poteſt [illegible] dem[illegible] dere[illegible]*
11 *Talis præſumitur voluntas præcedens quando [illegible] facto qu[illegible] tur*
12 *Ceſſat delictum in acceſſorio vbi principalis non delinquit.*
13 *A[illegible] lare dicitur qui ad Principem iter arripuit.*
14 *[illegible] dit hominibus fide dignis excuſatur ſi delinquit.*
15 *Ceſſante dolo de pœna aliqua tractare non oportet.*
16 *Faciens q[illegible] debet, culpa adſc[illegible] non poteſt*
17 *Culpa quæ [illegible] etiam leuiſſima abeſſe præſumitur ab [illegible], qui [illegible] re[illegible]*
18 *Vbi a[illegible] duplici ter poſſet intelligi, eo modo intelligi[illegible], qui [illegible] proteſtationem.*
19 *[illegible] notus agitur de vitanda pœna, ſufficit error quicunque*
20 *[illegible] in non faciendo non punitur quando fuit impedimentum [illegible] faciendi.*
21 *Prohibitus damnum dare, tenetur curare damnum detur.*

CONSILIVM CCCXIX.

Pro Magnifico domino Sebaſtiano Penſa ciue Montiregalis Marſaliæ condomino contra fiſcum Marchionatus Saluciarum.

DIVINO ſubſidio ex corde poſtulato. Propo[illegible] in facto quod caſtrum Marſaliæ in Marchionatu Sa[illegible] uod [illegible] mo in ſolidum acquiſitum fuit per Ma[illegible] Sebaſtianum Penſam, poſtea per modum [illegible] ma[illegible] conuentionis commune eſt factum [illegible] M[illegible] bri[illegible] & ipſius Penſæ, donec aliter [illegible] de accedēte & augeſcente rumore & fam[illegible] M[illegible] ab humanis receſſiſſet, & quod illuſt. D[illegible] Cæſaris vices ſuſti[illegible] ens Pedemontium a[illegible] in loco Claraſch. metuens D Sebaſtian[illegible] li[illegible] de improuiſo inuaderet[illegible] quo ipſo [illegible] non a eſſet, moræ periculo [illegible] cumbente, [illegible] obſ[illegible] uros, viles aut paupere[illegible] im[illegible] h[illegible] eſto[illegible] poſſidentes elegit, & in dicto caſt[illegible] nendi caſtrum ipſum communi[illegible] M[illegible] nis ſi ageret inter viuos, aut eo defuncto non [illegible] qui ipſi milites ob moræ periculum [illegible] ſtrum non [illegible] quam à ſubditis Ma[illegible] acceperunt. Quam ipſam rem Marchio aud[illegible] en[illegible] ſam [illegible] tutionis caſtri dom. Rufineta Mar[illegible] ſano de[illegible] egauit, qui præcepti[illegible] pœnalib. inſt[illegible] & [illegible] ad eius reſt[illegible] onem, quam f[illegible] cer[illegible] ad mandatum ipſius dom. Sebaſtian[illegible] qui audi[illegible] domini illico reſt[illegible] utionem fieri procurauit & [illegible] fuiſſet reſtitutio, niſi dom. Rufineta [illegible] ode[illegible] arbitrium voluiſſet. Cuius [illegible] ipſi[illegible] tes ind[illegible] luerunt, ſed ad ipſum Marc[illegible] em [illegible] ib[illegible] ndum vti[illegible] ligerēt an[illegible] x volun[illegible] fi ter d[illegible] Interea autem dum expectatu[illegible] ommiſſ[illegible] tur domino Rufin[illegible] Co[illegible] ato[illegible] m[illegible] nuſſo them[illegible] ud quæriti[illegible] me[illegible] S[illegible] menillud admi[illegible] lęſæ ma[illegible] ſta[illegible] aut eum ſuſtinere oporteat [illegible] § V[illegible] cendum prima fronte [illegible] ſſum nam tale crimen commi[illegible] m[illegible] tes, puta Duces, Con[illegible] M[illegible] ione A[illegible] *lu[illegible] in verb. læſæ maieſtatis de pœnis. lib.* P[illegible] D[illegible] *paſtoralis. ſuprinc. de* [illegible] ui[illegible] Al[illegible]

verſ.2.col.8. Qu[illegible] reſpectu amiſſionis honoris Barb. *in conſ.* [illegible] 38. & dicit Gui. Pap. [illegible] 374. quod [illegible] læſæ maieſtatis in contra non re[illegible] tamen de conſuetudine committitur [illegible] ¶ Hoc tamen præſuppoſito videtur [illegible] læſæ maieſtatis, ex illa contumacia in non [illegible] caſtrum. *l.3.§.1.vbi gl.in verbo, tenuerit ff. ad leg. Iul. maieſt.* vbi quod cuſtos arcis recuſans illam domino tradere, incidit in crimen læſæ maieſtatis: ſed dom. Sebaſtianus reſpectu partis caſtri pertinentis ad Marchionem ſolum erat nudus cuſtos, ergo, &c. ¶ Secundo dom. Sebaſtianus dicitur vaſallus illuſtr. Marchionis, cum iurauit fidelitatem, in quo iuramēto promittitur ne vaſallus ſit in aliquo damno domino ſuo, neq; in perſona, neq; in bonis. *in c.1.de forma fidel.in vſib.feud.* ſed talis fidelitati videtur contrauentum occupando caſtrum in ſolidum, in quo dominus [illegible] haberet. Conſtat autem contrauenientem iuramento fidelitatis in crimen incidere læſæ maieſtatis & proditionis, vt per Alex. *in d.conſ.* *3.col.2.in fin. & ſeq. lib.6.* Brun. Aſten. *in d.conſ.* 25. & tal[illegible] vaſallus contrauenieus fidelitati feudum amittit. Bal. *in conſ.*327. *Prædic.col.3.lib.1.* Nec tale peccatum contra Principem videtur excuſabile, quia faciens aliquid contra Principem dicitur facere contra ius naturale, quia Princeps dicitur pater omnium. C[illegible] *in conſ.* [illegible] *col.24. poſt prin.* allegat Alber. *in l.filium ff.de his qui ſui vel alieni iuris.* ¶ Tertio videtur dom. Sebaſtianus commiſiſſe crimen violentiæ contra dominum, nam recuſando admittere dominum ad poſſeſſorium rei communis videtur dominum ſpoliaſſe, & illi violentiam intuliſſe cū armis vt ſit locus pœnæ *l. ſi quis in tant.am. C. vnde vi.* Ita Anch. *conſ.*128. *Ad dicti a lucta in fin.per tex. in l.clam poſſidere.§. qui ad nundinas. ff.de acq. poſſ.* allegat etiam Spec. *in tit. de petit. & poſſeſſ.* Idem voluit Corn. *in conſ.* 20[illegible] *colum. fin.libro 2.* allegat Bald. *in l. ſi quis in tantam. verſi.10.dicunt.* Conſtat autem crimen violentiæ cum armis non modicum eſſe. *§.item lex Iulia, de vi. inſti. de publ.iudic.toto tit. ff. & Cod. ad leg. Iul. de vi publ.* Quod ipſum crimen ſi graue eſt contra priuatum, quid dicemus contra Marchionem & dominum? & contra dom. Sebaſtianum videtur adduci poſſe dictum Senecæ relatum per Bal. *in conſ.* 218. *Petita venia.colum.2. lib* 5. Cum pari contendere anceps eſt, cum ſuperiore ſeu Principe furioſum, cum inferiore ſordidum, ex quib. videtur ipſum dom. Sebaſtianum effugere non poſſe, quin pœnas ſuſtineat, aut criminis læſæ maieſtatis, aut ſaltem publicæ violentiæ & raptus bonorum, quia dicitur rapta etiam farina domini à molendinis communibus. ¶ Neque excuſandus videtur reus ex communione bonorum, quod caſtrum Marſaliæ commune eſſet. *iuxta l.merito.ff pro ſocio.* quia ille tex. non procedit quando ſocius in re cōmuni aliquid facit vltra quam facere licet iure cōmunionis, & ſe interponit vltra quam exigat ratio partis ſuæ, quia tunc non præſumitur facere pro iure ſuo ſeu iure communionis. *l. duo fratres.in fin. ff. de acquir. her.* Ita in terminis not. Alexan. *in conſ.*103. *colum* 4. *verſ.nunc reſtat reſpondere. lib.* 2. Sed dom. Sebaſtianus pro iure ſuo, aut iure communionis non poterat denegare aditum do. Commiſſario Ruſinetæ & alijs militib. Excellentiæ Marchionalis, ergo, &c. ¶ Sed præmiſſis non obſtantibus, quæ vere non obſtant, contrarium puto de iure & æquitate verius, quod imo puniri non debeat ipſe d. Sebaſtianus aliqua pœna, ſed præmio potius dignus ſit, & quod excuſetur ab omni dolo & culpa ſequentibus fundamentis. ¶ Et primo ipſe do. Sebaſtianus habet præſum-

1 ptionem iuris pro ſe, † quod in dubio dolus non præſumitur. *l. quoties §.qui dolo ff.de probat.c.2 de ren.in.c.lib.6.* & potius præſumitur culpa quam dolus. *l.quoties §.1.vbi Bar. ff.de her.inſtit.cum ſim.* vt per Alex. *in conſ.* [illegible] *col.* [illegible] Quæ iuris regula maxime procedit in ipſo dom. Seb[illegible] viro notorie probatiſſimo & laudatiſſimo nominis & famæ integerrimæ. Etenim non tenuis eſt virtus bonæ famæ, quæ ipſa vires debilitat iudiciorum. Bart. *in l.1 §.pen.per illum text. ff.de re milit.* Bald. *in l.fin.col.fin.C.de probat. & in conſi.*410. *In cauſa & quæſtione Antonii.colum.* [illegible] *poſt med.verſ. & multum prodeſt.lib.2.* Paul. de Caſt. *in conſ.* 184. [illegible] *tali quali proceſſu. in fin. libr.* 2. Dec. *in l.qui accuſare.col.1.poſt med.C.de edendo.* & alibi ſæpiſſime Doc. facit dictum Hoſt. *in c. ſiquis intib.col.pen.de dolo & contum.* vbi quod qualitas perſonæ magnæ & approbatæ fidei excuſat à condemnatione expenſarum, quia non eſt veriſimile quod talis perſona calumnioſe litigauerit, ſequitur Alex. *in l.properandum.§. ſin autem alterutra.colum.4.C.de iudic.* Iaſ. *in conſ.*170. *col.6.lib.2.* Similiter propter qualitatem & honeſtatem perſonæ admittitur probatio contra præſumptionem iuris & de iure. Ant. de Butr. *in c. vidua. in fin. de regul.* [illegible] *colum.2.in pr.* Itaq; non eſt [illegible] probatiſſimæ dolum [illegible] dominum & Marchionem. ¶ Secundo [illegible] & ſuſpicio doli contra ipſum dom. S[illegible] poteſtatione aut ſuo nomine facta [illegible] Marchionis poteſtate Ciliæ quod non [illegible] ad caſtrum Marſaliæ [illegible] dominum ipſius Marchionis, imo ad ius commune [illegible] nomine ſi viueret, aut eo defuncto nomine ſu[illegible] eorum, & ſic communi nomine propter ſocietatem [illegible] erent in caſtro, quo caſu dolus omnino ceſſat: nam [illegible] qui accipit rem vt domino re- 2
ſti[illegible] *l.3.§.non tantum* [illegible] *addictum eſt. ff. de minor. rum. nauſr.* q[illegible] text. ad hoc citat ſed et. de Sen. *conſ.* 107 *Domine Franciſce.* m[illegible] tex. ſtringit [illegible] in caſu noſtro, nam ibi excuſa[illegible] dolo qui [illegible] alienam, vt domino ſaluam [illegible] ex naufragio, quod [illegible] dicimus in dom. Sebaſtiano, qui [illegible] nam non [illegible] cōmunem, quam ſaluam faceret viro [illegible] domino: Imo [illegible] go, quia dominus Sebaſtianus prætend[illegible] ſolidum ad ſe pertinere, quicquid aliter [illegible] rem plenarie tranſact[illegible] ob id [illegible] cuſtodiendi [illegible] um, cuius pars dimidia [illegible] ipſius do. Sebaſtiani, in altera autem dimidia ſpem obtineret & habeat non vanam, ſi quidē narratur quod de tempore alienationis factæ per illuſtr. tunc Marchionem Franciſcum illa dimidia venditæ poſſidebatur per cameram Marchionalem ob delictum vaſalli in maledicendo de eius Principe, cuius maledictionis pœna remittitur arbitrio ipſius Principis, *vt in tit. C.ſi quis imper.maledixerit* Itaq; tenendo & poſſidendo eius bona, non obſcure declarabat Princeps eius voluntatem circa pœnam quod dimidiam illius caſtri cōfiſcatam eſſe volebat cameræ Marchionali, quia facto datur voluntas intelligi *l.Paulus reſpondet non tantum verbis.ff.rem rat.hab.l. duo fratres.ff.de acq.her.l.reprehen.in la.C.de inſtit. & ſubſtit.* vbi gl. dicit, quod facto datur voluntas intelligi etiam in animalib. brutis. *§. ceruos.inſtit.de rerum diuiſion.* ¶ Cæterum non eundo per generalia & ſimilia in terminis adduco Socin. *in conſ.*244.*colum.*5.*verſ.ſic.non obſtat quod re quiritur lib.* 2. vbi quod facto ipſo inducitur ſententia Iudicis declaratoria, vel interlocutoria, puta, vt examinentur teſtes ad æternam rei memoriam, requiritur interlocutoria quod primo Iudex pronunciet teſtes eſſe valetudinarios, vel de proximo abſituros, dicit Soc. quod ſatis dicitur Iudex hoc declarare ex[illegible] committendo: eodem modo ſatis dicitur Princeps declarare pœnam publicationis bonorum, illa accipiendo. Sed magis in terminis adduco eundem Soc. *in conſ.* 4. *col.* 6. *circa med. lib.*3. vbi † ſi Princeps aufert feudum à vaſallo tan- 3
quā à rebelle, ſatis dicitur declarare rebellem eum eſſe. ¶ Quo ipſo ita præſuppoſito conſideret iudicium facturus ſi ſpes do. Sebaſtiani circa recuperationem ipſius caſtri in ſolidum fuerit, & ſit vana aut probabilis. Conſideret etiam quod à primordio tituli poſterior formatur euentus. *l.1.circa fin.C.de impo. lucr. deſcri. lib.*10. nec falſum dicitur quod primordium aliquod habuit veritatis. *l.cum filius §.heres.ff de leg.*2. Itaque reſpiciendo ad primordium & initium rei, cum pertineret & pertineat caſtrum Marſaliæ ad ipſum dom. Sebaſtianum in ſolidum, quod ſubſecutum eſt ad cuſtodiam & incolumitatem ipſius caſtri, ſtante rumore mortis illuſtr. Marchionis, de aduentu illuſtr. Procæſaris, conſtante odio ſubditorum Marſaliæ, ad vitium aut crimen aliquod referri nullo modo poteſt. ¶ Tertio ſi Marchio de tempore miſſionis militum vere fuiſſet mortuus, quemadmodum rumor diſperſus erat, ſtante etiam rumore aduentus Procæſaris & Illuſtr. Ioan. Ludouici fratris ipſius Marchionis, nullus (arbitror) diceret rem maleactam per dominum Sebaſtianum cōſortem & ſocium caſtri, ſi illud interim ſaluum eſſe curaſſet ab inſidiis aduerſariorum: ergo idem dicendum eſt & ipſo Marchione ſuperſtite, quia rumor mortis excuſat ipſum dom. Sebaſtianum à dolo & à pœna. *l. fin. ff. de hered. inſtituend.* vbi quod ſubueniri debet etiam ex rumore populi. Ideo mulier ſecundo nubens propter rumorem mortis mariti longo tranſacto tempore, non patitur pœnas adulterii *l. miles.§. mulier. ff. de adult.* Bald. *in conſilio* 488. *Sequens quæſtio in* 5. *dubio.libro* 1. & quod rumor
aut † fama excuſet à dolo, tradit Bart. *in l.cum quidam. §. quod dicitur.colum.2. verſicul. & ſic facit. ff. de acquirend. hered. & in l.1.colum.2.ff. ad Turpilian.* Idem voluit Oldrad. *in conſilio* 304. *Infraſcripta allegationes.colum.2.poſt med.* vbi quod excuſatur impetrans beneficium 4

viuentis quando rumor erat quod eſſet mortuus, & quod fa-
ma excuſet à dolo, voluit Guido Papæ, *quæſt.* 301. *in quarto effectu*,
& idem Papæ, *quæſt.* 446. vbi loquitur de quodam caſtellano
qui fecerat viſitari puellam de qua rumor erat quod partum e-
nixa erat & occultauerat, licet ita non eſſet, quod non tenetur
iniuriarum, ſed excuſatur à dolo propter illum rumorem. Ali-
bi ſcribit Calcat. *in conſil.* 100 *colum.* 3. *in fin.* quod incidens ligna
tanquam in nemore talis, cum non eſſet, excuſatur ſi ex fama
aut vulgi opinione tanquam illius appellabatur, & magis in ter-
minis circa principem tradit Bald. *in conſi.* 280. *Quia conſuetudo.*
lib. 4. vbi quod fama excuſat primatem vtentem iuribus regali-
bus quando fama erat quod talia regalia pertinebant ad ante-
ceſſores ipſius vtentis: fama autem de morte Marchionis iam
inualuerat, nec modico tēpore durauerat in tota patria Pede-
montium, imo & in ipſo Marchionatu Saluciarum & in ciuita-
te Montiſgregalis, & quod fama talis eſſet, teſtimonia plurima
docent: imo ipſi mihi ſcienti Marchionem ſuperſtitem multi
volebant perſuadere mortuum eum eſſe per dies plurimos.
¶ Quarto ſi Illuſtr. Cæſaris locum tenens vere iter inſtruxiſſet
cum militibus armatis verſus Marſaliam, & dominus Sebaſtia-
nus Penſi id egiſſet, quod præſtitit & fecit, nemo eum doli, ſi
non inſaniat, audeat accuſare. tantum dicendum eſt ſtante ſu-
5 ſpicione ne accederet, † quia idem operatur metus & ſuſpicio
periculi ad excuſandum, quod ipſum periculum, & idem ope-
ratur ſuſpicio belli quod ipſum bellum, nam ſufficit iuſtus ti-
mor quamuis malum aut periculum non contingat. *l. habitato-*
res. § *fin ff. locati. l. in hac ſtipulatione. ff. de damn. infect.* quæ duo iura ad
hoc allegat Imol *in conſ.* 7 *colum* 2. not. Soci. poſt Alex. *in l. diuor-*
tio. in prin. colum 4. *in* 3. *not. ff. ſoluto matrim.* Dec. *in l.* 1. *colum.* 2. *num.* 67.
ff. de offi. eius. & in conſi. 297. *colum.* 2. *circa med.* Iaſ. *in l. clam poſſidere.* §.
qui ad nundinas in 8. *not. ff. de acquir. poſſeſ.* imo peior eſt belli timor i-
pſo bello Seneca in tragœdiis quem refert Anch. *in conſ.* 88. *Præ-*
miſſa facti ſerie. colum. 2. ¶ Quinto magis in terminis adduco text.
in l. 3. § *hac act. ff. de negoc. geſt.* vbi in materia actionis negociorum
geſtorum æquiparantur neceſſitas gerendi & ſuſpicio neceſſi-
tatis, & ſic paria ſunt gerat quod quis negocium alterius neceſ-
ſario, vel quod ſuſpicetur ſe teneri, modo do. Sebaſt. erat & eſt
vaſallus dom. Marchionis, videbat periculum incumbere, pro-
babiliter dubitare poterat de duobus, primo ne iacturam face-
ret in perditione caſtri in quo ipſo ius in ſolidum prætenderet.
¶ Secundo ne dominus obiiceret inueniens tempus, cur non
proſpectum eſſe curaſſet incolumitati caſtri ipſe proximior,
aduerſariis appropinquantibus, cum teneatur vaſallus ex for-
ma fidelitatis curare vt ne in damno fiat dominus, ſtante tanta
ſuſpicione & metu ob aduentum hoſtium apud omnes regiæ
Maieſtatis ſubiectos, vt eo nomine auctæ fuerint vigiliæ & cu-
ſtodiæ in locis muniis: nam Sauiliani etiam cataphracti equi-
tes in vigiliis & excubus aſſidui erant, & in ciuitate Montiſgre-
galis equites leuis armaturæ qui foris agerent, intus cuſtodias
agere iuſſi ſunt, & ciues ipſi ad cuſtodiam vrgebantur vt lo-
quuntur teſtes ¶ Nec extra metum Marchionatus ipſe erat præ
exte... imminens notorie. ¶ Sexto ceſſet doli præſumptio in do.
Seb... arguēdo à fortiori hoc modo: nam † ceſſat doli præſum-
6 ptio ratione coniunctionis ſanguinis quod doloſe quis agere
quid voluerit aduerſus coniunctum ſanguine. *l ſi vxor.* §. *fin. vbi*
gl. ff. de adult. vbi non probans accuſationem propoſitam aduer-
ſus coniunctum, excuſatur à calumnia ratione coniunctionis
ſanguinis, quia non eſt veriſimile quod per calumniam coniū-
ctum voluerit accuſare. Ad idem text. *in l. in ſenatuſconſultum.* § *eos.*
ff. ad Turpilli. quanto minus præſumi debet dolus contra prin-
cipem in vaſallo quod voluerit vaſallus doloſe aut improbe
quid agere aduerſus dominum poteſtatem habentem vlciſcē-
di, cum ſatuum ſit latrare contra eos qui poſſunt mordere. Iaſ.
in conſ. 167. *col.* 5. *ante med. lib.* 4. & tanto minus præſumi debet talis
dolus contra vaſallum opulentiſſimum, qui non ignoraret ia-
cturam maximam & corporis & æris ſi dominum offenderet.
¶ Septimo quod egit dom. Sebaſtianus, id fecit cauſa iuris ſui
conſeruandi, non etiam vt domino noceret, ergo in dolo dici
non poteſt: nam ſi quis ædificium vicini deſtruat orto incēdio,
ædificii ſui defendendi cauſa, dolo caret, nec tenetur crimina-
liter, neq; ciuiliter ad ſatisfactionem damni. *l.* 3. §. *quod ait prætor.*
ff. de incend. ruin. naufrag. vbi gloſ. concord. allegat. ¶ Nono † cauſa facti
7 inſpici debet non ipſum factum: ideo ſi quis rapiat ancillam a-
lienam cauſa libidinis, non tenetur de furto, quia non ſurripuit
cauſa furandi, ſed ob cauſam Veneris. *l. verum.* 2. *ff. de furtis.* & hoc
generale eſt in qualibet materia, vt inſpici debeat cauſa facti
potius quam ipſum factum. *cap. fin de tranſact.* ...
glo. in verſ. ex cauſa. de accuſ. cap. intelligentia. de verb. ſig. ...
§. *quædam. vbi glo. in verſ. ex cauſa. de curator.* & dicit glo. ...
militer. ff. de alim. leg. quod ſemper ſpectandum eſt quare ...
fiat, per text. *in l. cum tale.* § *fin ff. de condit. & demonſt.* & quod ...
chro caſu ſcribit Cald. *in conſil.* 4. *in tit. de hær.* vbi quod ſi in ...
petat hoſtiam non conſecratam, non quia de fide m... c...
ſed vt dici poſſit eum ſumpſiſſe corpus Chriſti, t... u...
gnum corpus Chriſti aſſumere, licet peccet ita facien... pe-
tendo hoſtiam non conſecratam, non tamen iudic... hæreti-
cus, quia cauſa petendi non fuit quod de fide male ſentiret, ſed
quia indignum ſe crederet: modo in propoſito noſtro conſide-
remus cauſam cur miſerit dominus Sebaſtianus milites ad ca-
ſtrum Marſaliæ, an eos miſerit in odium domini vt domino
noceret, an vero vt ius ſuum, imo & domini ſaluum faceret ita-
que cum cauſa mittendi fuerit bona & laudabilis, effectus in-
de ſecutus non poteſt non bonus dici. ſemper enim effectus
iudicatur & regulatur è ſua cauſa. *l.* 3. *ff. de pecu.* Iaſ. *in l. diuortio. in pr.*
in primo not. ff. ſoluto matrim. ideo dicitur, qualis mater ta... filia.
Ezechiel. c. 16. & Pſal. 44. Pro patribus tuis nati filii. ¶ Decimo
dominus † Sebaſtianus nihil occulte egit, ſed palam & publice 8
declarando cauſam cur ita ageret per proteſtationem, ex quo a-
ctu ita publice facto dolus argui non poteſt. *l. g. fin ff.* ... *rei ux-*
piarum. l. non exiſtimo. ff. de adminiſtrat. tutor. l. non intelligitur. ff. de iur. ...
ſci. ¶ Vndecimo nihil repente aut ſubito & temerarie egit do-
minus Sebaſtianus, ſed prius anceps fuit quid ageret & conſi-
lium petiit è coniunctis & amicis, qui ita faciendum eſſe in cō-
ſilio fuerunt. Quo conſilio habito, non ſtatim milites ut cu-
ſtodes delegauit, ſed prius omnibus voluit proteſtationem ha-
bere coram officiario Ciliarii ſuper cauſa mittēdi, quam ipſam
etiam proteſtationem reperi voluit in ipſo loco Marſaliæ co-
ram Claudio de Bona locum tenente licet ipſe proteſtatio-
nem noluerit recipere, his non contentus nuncium deſtinauit
ad dominum, qui nuncius fuit frater Emanuel Iacomellus
Prior in conuentu fratrum Minorum obſeruantiæ Foſſani. Ex
quibus tot actibus multiplicatis, aperte tollitur omnis ſuſpitio
doli in ipſo domino Sebaſtiano. *argum. l. ſi mulier. C. ad Vellea.* &
quod dicitur de confeſſione geminata *in l. in contractibus.* §. *illo. C.*
de non num pec. & in l. cum ſcimus. vbi Bart. *C. de agricol. & cenſ. libro* 11.
Etenim ſi animum habuiſſet dominum offendendi non vtiq;
tot proteſtationibus opus erat, non nuncii tranſmiſſione ad
dominum. ¶ Duodecimo † dubitans & ignorans æquiparan- 9
tur. *l. manifeſtiſſimi.* §. *ſin autem neſcius. C. de furtis.* Ideo ita parcitur
dubitanti ſicut ignoranti. Bald. *in l. leges ſacratiſſimæ. C. de legibus.* Iaſ.
in l. ſi per errorem. colum. 2. *in prin. ff. de iuriſdict. omnium iudic.* & dicitur
dubitans in bona fide. Cornel. *in conſilio* 150. *colum.* 2 *libro* 4. &
condictio indebiti ita competit dubitandi, an ſolutum eſſet
debitum vel non, ſicut ignoranti indebitum eſſe. *l. fin. C. de con-*
dic. indebi. Iaſ. *in conſi.* 160. *colum.* 3. *in fin.* modo per teſtes apparet
quod dominus Sebaſtianus audito rumore & ipſo perſeue an-
te de morte Marchionis, & de aduentu procæſaris appropin-
quanti, in dubio erat quid ageret circa caſtrum Marſaliæ, iuxta
illud comicum: Dum in dubio eſt animus, facile huc atque il-
luc impellitur, ob id conſilium quærebat quid facto opus eſ-
ſet. Conſilium autem redditum eſt ita agendi quomodo a-
ctum eſt. Quo dubio ſtante neſcio videre in quo deliquerit,
nam ſi æquiparantur dubitans & ignorans, perinde eſt ac ta-
lis cuſtodia ad caſtrum Marſaliæ miſſa eſſet ipſo domino Seba-
ſtiano ignorante. Ignorantia autē ſine dubio nō punitur, nec
poteſt ignoranti fraus aut dolus imputari. *l. ex maleficiis.* §. *longe*
minus. ff. de actio. & obligat. l. genero. ff. de infam. l. cum ancilla. C. de in-
ceſt. nupt. l. generali. C. de tabular. libro 10. *l. Iulianus.* §. *ſi tamen ignorans.*
ff. ad exhibend. cap. penult. de cleric. excommunicandis miniſtran. ſacro de
ſenten. excom. ¶ Decimotertio innocentia dom. Sebaſtiani non
obſcure oſtenditur, nam poſito & non conceſſo, caſtrum Mar-
ſaliæ in ſolidum ad eum non pertineret, ſed pro parte tantum,
tamen ratione partis ſuæ conſeruandæ potuit in tanto metu &
diſcrimine caſtrum munire militibus & annona, cū eſſet & ſit
res quæ pro parte explicari non poteſt, eſt enim defenſionis fa-
ctum indiuiduum *l. in executione.* §. *in ſolidum. ff. de verb oblig.* ſed in
indiuiduis poteſt vnus ſociorum in ſolidum agere. *l. heredes.* § *an*
ea. ff. famil. erciſ. ſi vnus ſociorum in indiuiduis poteſt in ſolidum
agere, quanto magis poterit in ſolidum rem defendere cum fa-
uorabilior ſit cauſa defenſionis quam actionis. *reg. fauorabiliores.*
ff. de reg.

ff. de reg. iuris. Itaque ſi licuit domino Sebaſtiano caſtrum commune in ſolidum cuſtodire ab inſidiis aduerſariorum, in caſu permiſſo fraus aut dolus conſiderari non poteſt. *l. 1. §. non fuit. ff. de dolo. l. nemo damnum. ff. de regulis iuris. l. ſancimus. C. de adminiſt. tut. l. Gracchus. C. de adult.* nemini enim iniuriam facit qui vtitur iure ſuo. *l. iniuriarum. §. 1. ff. de iniur. l. nullus videtur. ff. de reg. iuris. lib. 1. C. de delator. lib. 10. cap. cum eccleſia Vulterana. de electio. c. dilectus.* vbi Car. *de offi. deleg.* Ideo in actu permiſſo ſimulatio contractus allegari non poteſt. Paul. de Caſtr. *in conſil. 388. Plus. in fin. lib. 1.* ¶ Decimo-
10 quarto † poteſt vnus ſociorum in ſolidum diſponere de re cõmuni ad eum vſum ad quem eſt deſtinata. Ideo quando domus communis locari conſueuit, poteſt vnus tantum ſociorum totam domum locare. Bart. *in l. & hæc diſtinctio. §. cum fundum. ff. loc.* Alexan. *in l. ſeruo electione. §. Labeo. ff. de leg.* Dec. *in conſilio 282.* ſed natura caſtri exiſtentis in partibus limitrophis de tempore ſuſpecto eſt vt muniatur militibus & annona, nec aliter ſolum fieri poteſt: itaque dominus Sebaſtianus in tali actu monitionis fines communionis non exceſſit, imo re communi vſus eſt ſecundum eius naturam & vſum communem. ¶ Decimoquinto ceſſat dolus in domino Sebaſtiano, quia ſtatim atque curauit caſtrum muniri militibus & annona, nuncium tranſmitti ſtuduit ad ipſum dominum Marchionem vt veritas haberetur vitæ vel mortis, quod ſi inter viuos eſſet, mandaret eius Excellẽtia quid vellet circa factum ipſius caſtri, quia ab eius mandatu & iuſſu recedere non intendebat: ex qua ipſa re ſignificando illico domino rem omnem vt acta eſſet, non poteſt doli ſuſpicio nõ nnmino ceſſare. Pro quo adduco in fortiori quod Bald. ſcribit *in conſilio 250. In quæſtione. colum. 3. in fin. libro 1. quod eſt repetitum in conſil. 382. libro 3.* vbi quod dolus non præſumitur in receptante perſonã aut bona, quando recepta intra paucos dies illud propalauit: quid hic dicemus vbi dominus Sebaſtianus factũ munitionis, caſtri Marſaliæ propalauit domino non intra paucos dies, ſed continuo & ex templo quo ad eum licet nuncius, id eſt, frater Emanuel aliquantulum diſtulerit, ſed tamen eſt quo ad ipſum dom. Sebaſtianum quod in cõtinenti dominum certiorem fieri de omnibus curam egerit, hic quæſo reſpondeat qui dom. Sebaſtiano crimen imponit, ſi dolus in eo fuiſſet an nuncium eiuſmodi ad dominum delegandum curaſſet cum mandato memorato obediendi præceptis eius. ¶ Ex his enim quæ poſtea in continenti fiunt, declaratur qualis fuerit animus in præcedentibus. *l. ſi venerit. in fin. ff. de prin. & rodu. offi. de electio. lib. 6.* ideo cum in continenti miſſus fuerit nuncius ad dominum, non obſcure arguitur de bono animo ipſius domini Sebaſtiani erga ipſum dominũ quod eum nullo modo vellet offendere. ¶ Decimoſexto ceſſat dolus in dom. Sebaſtiano, quia cum primum intellexit voluntatem domini eſſe vt reſtitueretur caſtrum in manibus dom. Rufinetæ commiſſarii Marchionalis, continuò nuncium delegauit ad milites caſtri pro eius relaxatione. Qui ipſi milites caſtrum reſtituere voluerunt, ſed dominus commiſſarius ſine alio mandato domini captiuos eos volebat, ideo quatenus attinet ad ipſum do. Sebaſtianum, ipſe citra omnem moram reſtitutionem caſtri fieri mandauit obediendo præcepto domini, & quod caſtrum poſtea & breui tempore reſtitutum eſt vbi militibus incolumis reditus permiſſus eſt à domino commiſſario. Ex quo ipſo facto reſtitutionis ſubſecuto & mandati do. Sebaſtiani ad milites de reſtituendo citra moram, fides bona arguitur ipſius dom. Sebaſtiani ab initio deſtinationis militum quod domino ſuo nocere in aliquo non intenderet: talis † enim præſumitur voluntas præcedens, qualis colli-
11 gitur ex facto quod ſequitur. *l. ſed & Iulianus. §. proinde. ff. ad Macedonia. l. ſi ſeruus plurium. §. fin. ff. de leg. 1. l. poſt contractum.* vbi Bartol. *ff. de donatio. l. cum quis. ante fin. C. de natural. lib. lib.* & mora omnis reſtitutionis imputanda eſt ipſi domino commiſſario qui citra mãdatum domini militum captiuitatem deſiderabat, & cum milites acceſſiſſent in caſtrum de mandato domini Sebaſtiani ius in caſtro notorie habentis, nulla erit ratio eos captiuandi. Bald. & Doct. *in l. in rem. §. ſignum. ff. de rei vendic.* vbi quod laborans in re aliena de mandato alterius non tenetur. Quod procedit etiam ſi fiant proteſtationes poſt locationẽ operarum, quia talibus proteſtationibus credendum non eſt niſi fiant ante actum ab initio. Alex. *in l. pupillo. §. nunciationem colum. 3. verſ. tamen aduerte. ff. de oper. no. nun.* Soc. *in conſ. 54. colum. fin. poſt med. lib. 4.* & ſi iſtud procedit in operariis laborantibus in re aliena, quid hic dicemus in iſtis militibus cuſtodientibus caſtrum quod ſine dubio pro dimidia erat mandatoris, imo & in ſolidum vt ſupra dictum eſt.

¶ Amplius dico cum dominus commiſſarius nullam oſtenderet commiſſionem aut poteſtatem captiuandi ipſos milites, non tenebantur ei credere. *l. 1. C. de mandat. prin. c. cum in iure. de offi. delegat.* Imo licitum fuiſſet tali commiſſario fidem non facienti de poteſtate ſua ad hoc de facto reſiſtere. *l. prohibitum.* vbi Bart. *ff. de iure fiſci. lib. 10. l. defenſionis facultas. C. eod. tit.* Bartol. *in l. contra. C. de exact. & execut. lib. 12.* & re vera exceſſit dominus commiſſarius in hoc fines mandati, quia vbi frater Emanuel primo loco renunciauit Illuſtr. Marchioni ſeriem & cauſam rei geſtæ, illud ſolum mandauit Marchio vt caſtrum remiſſum eſſet, nõ etiam vt captiui cuſtodes fierent, quam ipſum etiam captiuationem de iure mandare non potuiſſet, cum in eo delictum non caderet, ſed excuſarentur ob mandatum domini Sebaſtiani ius in caſtro notorie habentis vt ſupra dictum eſt. Potuit igitur & debuit dominus Sebaſtianus non obedire d. Rufinetæ formam ſuæ poteſtatis excedenti, imo etiam ſuperiori ipſi parendũ non eſt, quando officium ſuum egreditur & poteſtatem ſuam excedit. *glo. l. non videtur. §. qui iuſſu. ff. de reg. iuris.* Innoc. *in c. ad aures. de tempor. ordi.* ſequitur Deci. *in conſil. 72. colum. 2. poſt med. & colum. 4. ante fin.* Rurſus, ſi in domino Sebaſtiano mandante delictum non cadit per ſupradicta & alia infra dicenda, multo minus dici poterant deliquiſſe ipſi mandatarii, quia † ceſſat neceſſario deli- 12
ctum in acceſſorio vbi principalis non deliquit. *l. ſi mulier. §. 1. ff. rerum amota.* Bartol. *in conſil. 199. Tudertinum. in prin.* Bald. *in conſ. 497. De acceſſorio. libro 1. in conſil. 410. In cauſa & quæſtione Antonii. colum. 2. libro 2. in conſilio 9. in fin. & in conſil. 16. in fin. lib. 3.* Ideo cum dominus commiſſarius nullam oſtenderet poteſtatem cuſtodes captiuandi ad arbitrium, potuerunt & debuerunt ipſi cuſtodes præcepto domini Rufinetæ non obedire. Contumacia enim aut inobedientia non dicitur coram eo de cuius iuriſdictione non conſtat. *l. non videtur. ff. de iudi. l. eo tempore. ff. de peculio. leg. contumacia. §. contumaces. ff. de re milit.* Oldr. *in conſil. 301. Breues allegationes. in prin.* Bellamera *in cap. Romana. §. contrahentes. colum. 2. ante med. de foro competen. lib. 6.* de quo latius ſcribo infra in reſponſionibus [illegible] ... ad primum argumentum ¶ ... ſeptimo ceſſat ſuſpitio doli, quia vt primum vidit ... baſtianus quod dominus Rufineta noluit accep... ... caſtri ſine captiuatione militum & cuſtodũ ad ... licet ad ipſum Rufinetam onus probandi voluntat... Marchionis talem fuiſſe circa captiuationem pert... vt dixi, nemini credatur aſſerenti ſe habere pote... cipe nuli de caper literas fidem fa... tamen ipſe ... baſtianus veritus vt ne domino quoquo modo d... integro ad eum nũcium delegauit, id eſt, memorat... Emanuelem Iacomelli vt intelligeret voluntatem ... caperent captiuationem, quam ipſam voluntatem ... nus declarauit ſecundum teſtimonium ipſius Iaco... ſolum intendebat quod milites interrogarentur, & ... ernies dimiſſi fierent. In qua re duo conſidero, primũ quod nõ ſolum imputandum eſt domino Rufinetæ non oſtendenti de poteſtate ſua, ſed etiam quod eius petitio circa captiuationem aperte repugnabat voluntati domini, & ſic excedebat fines mandati. *l. diligenter. ff. mandati.* ¶ Secundum, quod conſidero, eſt ſincera & recta bona fides ipſius dom. Sebaſtiani, qui ſtatim ad dominum miſit ad explorandum eius intentionem, licet ipſi D. Sebaſt. ſatis eſſet quod dom. Rufineta fidem non faceret de eius poteſtate, ob id dici poteſt in D. Sebaſt. quod nõ fugiebat, nec contumacem agebat ad Principem recurrendo. *c. cum clim. circa fin. de dolo & contuma. c. dilectis. de appella.* vbi † quod appellare 13
dicitur qui ad principem iter arripit. imo quod plus eſt ad principem iter arripere quàm appellare. ¶ Decimooctauo dolus conſiderari non poteſt ceſſante commodo quando ex dolo commodum quis non conſequitur: nam commodum & vtilitas dicitur cauſa doli, ergo ceſſante cauſa doli & ipſum etiam dolũ ceſſare neceſſe eſt. ita Feder. de ſenis *in conſ. 125. Super eo quod quæritur. circa fin.* vbi quod ſententia iudicis aut arbitratoris licet ſit iniuſta, non tamen dicitur doloſa, ex quo vtilitas ſententiæ ad iudicem aut arbitratorem non pertinet. Alibi ſcribit Iaſ. *in conſ. 167. col. 2. poſt med. li. 4.* quod non eſt veriſimile quem voluiſſe excitare ſeditionem, ex qua commodum non percipiat. Alibi ſcribit Bald. *in conſ. 250. In quæſtione. colum. 3. lib. 1. quod eſt repetitum in conſil. 382. lib. 5.* quod dolus non præſumitur ex receptatione alicuius perſonę vel rei, quando ex tali receptatione commodum ad receptantem non peruenit. Alibi ſcribit Alexand. *in conſ. 127. colum. 3. libr. 4.* quod nunquam præſumitur quis delinquere ex

actu quem facit, niſi quandò delictum eſſet ei fauorabile. *per gl.*
ſing. in l. qui iniraſſe. §. ſi pater. ff. de inuentrar. Alibi & fortius ſcribit I-
mol. *in conſi. 529. in fin.* quod non præſumitur quis dolo feciſſe
quod non cedit ad ſui commodum vel incommodum. Modo
cõſideret qui in ratione naturali iudicium facit, ſi dicimus do-
minum Sebaſtianum muniuiſſe caſtrum Marſaliæ perſonis &
victu in odiũ domini, ſeu vt domino in aliquo noceret, quam
vtilitatem conſequi ex tali facto aduerſus dominum poterat,
nunquid demens adeo putãdus eſt quod crederet bellum cum
domino ſe conſequi poſſe habere & gerere? nunquid ad eum
modum putaret ſe conſequi poſſe ius alterius dimidiæ quam
in caſtro ipſo non fruſtra prætendit? ¶ Decimonono præſum-
ptio ſumitur ex his quę apparent, non ex his de quibus nõ cõn-
ſtat: ideo poſſeſſio præſumitur ſubſecuta ex titulo de quo ap-
paret, non ex titulo de quo non conſtat. *l. quedam mulier. ff. de rei*
vendic. l. 1. C. de acquir. poſſeſſione. cum ſimilib. & dicit Anch. *in conſi. 302.*
Materia de qua quæritur. colu. fi. poſt med. quod ea quæ non apparent
non pręſumuntur, ſed rebus ſic ſe habentibus iudicandum eſt,
per text. *in l. lege. ff. de contrah. empt. & in leg. quod Seruius ff. de condit. ob*
cau. modo in proceſſu ex teſtibus apparet de odio capitali ho-
minum Marſaliæ contra ipſum D. Sebaſtianum, de quo odio
loquuntur quartus, nonus, vndecimus, & decimusquintus te-
ſtes ipſius dom. Sebaſtiani. Ruſus apparet de aduentu Illuſtr.
Procæſãis, de fama vehementi mortis Illuſtriſſ. Marchionis,
ob id veriſimiliter timere poterat Sebaſtianus ab inſidijs ad-
uerſariorum, & etiam hominum Marſaliæ, qui dicebant ſe mal-
le filios proprios comedere quam imperium ipſius domini Se-
baſtiani ſuſtinere. Itaq; dicamus rem omnem geſtam fuiſſe, vt
eſt, ex cauſis apparentibus, non etiam ex alia cauſa de qua nul-
lo modo appareat. ¶ Vigeſimo ceſſat ſuſpitio doli: nam domi-
nus Sebaſtianus ante deſtinationem militum ad caſtrum Mar-
ſaliæ multos interrogauit, & ipſos viros fide dignos, quid ipſis
agendum videretur in caſu tam ſubito & improuiſo ac diſcri-
mine pleno, qui ipſi interrogati ſuaſerunt & conſuluerunt ca-
ſtrum muniendum eſſe ad ſaluum ius habentis. Credidit con-
ſilio eiuſmodi ipſe dominus Sebaſtianus & rem egit ex eo con-
ſilio hominum non contemnendæ fidei & authoritatis: quæſo
in quo deliquit D. Sebaſtianus, an non excuſatur ſi hominibus
14 credidit fide dignis? † *iuxta glo. in l. Titio fundus. ff. de condit. & demon.*
vbi quod dictum notabilis viri excuſat. Imo amplius ex tali di-
cto viri notabilis titulus ſufficiens inducitur ad pręſcribendum
ſi quis audierit ab aliquo viro notabili quod res quam poſſide-
bat, erat ipſius poſſidentis, & quod prædeceſſores ſui eandem
quoque rem poſſederant. Ita Bart. & Doct. *in l. Celſus. ff. de vſucap.*
Bald. *in l. vnica. C. de rei vendit.* Abb. *in conſ. 102. column. 1. lib. 1.* Angel.
in l. 1. in prin. & ibi Iaſ. *column. 3. ff. de eo, per quem factum erit.* Alex. *in conſi.*
28. column. 3. lib. 1. Curt. ſenior *in conſi. 27. column. 8. circa med.* & in ter-
minis conſilij quod ex eo tollatur ſuſpicio doli, not. Bald. &
Doct. *in l. 2. C. de his quibus vt indign.* vbi quod iutor non præſumi-
tur dolo verſatus, quando aliquid egit ex conſilio coniunctorum
pupilli, ſequitur Iaſ. *in l. 1. in fin. C. de tranſactio.* Conſuluit au-
tem D. Sebaſtianus eos quos conſulere potuit in caſu tam re-
pentino: ideo generaliter dicimus quod habens probabilem
credulitatem aliquid faciendi, non dicitur eſſe in dolo. Dec. *in*
conſ. 188. col. 3. ante med. Sed quis illud loqui audeat non habuiſſe
dominum Sebaſtianum probabilem credulitatem ita agendi
ex tot cauſis ſupra cõmemoratis? ¶ Vigeſimoprimo cauſa quæ-
libet etiam iniuſta & beſtialis à dolo excuſat & à pœna. *l. igitur.*
ff. de lib. cau. glo. fin. in l. plagij crimineh. C. ad l. Fauiam de plagiar. cum ſimil.
vt per Alex. *in conſ. 75. column. 3. verſ. & non eſt dubium. lib. 5.* quid hic
dicemus vbi tot cauſæ concurrunt & ipſæ iuſtiſſimæ? Similiter
cauſa colorata excuſat à pœna. *glo. in l. 3. § in hac. ff. de trutica.* Innoc.
in cap. pen. de rebus eccleſ. non alienan. Soc. *inter conſ. Curtij ſenioris in conſi.*
20. column. 21. circa med. Sed quæſo, ſi cauſa quibus motus eſt do-
minus Sebaſtianus ad ita agendum coloratæ dici poſſunt. ¶ Vi-
geſimoſecundo dici nõ poteſt taliter deliquiſſe qui aliquo mo-
do à pœna poteſt excuſari. Bald. *in l. vt vim. in 7. qu. ff. de iuſtitia &*
iure. Bald. & Salic. *in l. Gracchus. per illum text. C. de adulter.* Collegium
Doct. Florentinorum *inter conſil. Curtij ſenioris. in conſ. 21. column. 6.*
circa med. ſed dicat mihi contrarium contendens ſi dominus
Sebaſtianus aliquo modo à pœna excuſari poſſit? & pondero
quod Soc. & Collegium Florentinum conſuluerunt in caſu a-
trociſſimo ad excuſandum occiſores vnius Cardinalis Legati,
ſuper quo facto etiam conſuluit Hieronymus Tortus poſt cõ-
ſil. Anton. de Butr. ¶ Vidimus caſus duos ſupra 20. ex quibus à
dolo excuſetur D. Sebaſtianus. Infertur quod † [illegible]
de pœna aliqua tractari non oportet. Bartol. *in l. [illegible] §. non [illegible]*
ſi quis teſta. lib. eſſe iuſſ. fuerit. Alex. *in conſi. 177. column. 2. verſ. [illegible]*
patet. lib. 5. Corn. *in conſ. 205. column. 2. lib. 2.* Dec. *in r. cognoſcentes. column.*
5. verſ. & ad ſuperius dicta. de conſtitutio. Ideo ſtatutum pœnal non
habet locũ ceſſante dolo, licet loquatur ſtatutum ſimp[illegible]r.
Bald. *in l. fin. per glo. ibi. ff. quod quiſq; iuris.* Dec. *in conſ. 83. column. 2. poſt*
med. verſ. 3. reſpondetur. vbi Dec. quod ſtatutum puniens damnum
dantem aliqua magna pœna, intelligitur accedente dolo, quia
non eſt veriſimile quod ſtatuentes voluerint quem puniri ma-
gna pœna ſine dolo. ¶ Sed enim ad maiorem & ſplendidiorem
demonſtrationem innocentiæ ipſius dom. Sebaſtiani, non cõ-
tentus ero doli ſuſpitiones amouiſſe, ſed & culpæ quoque [illegible]
mois præſumptiones tollemus. ¶ Primo igitur ceſſat culpa in
domino Sebaſtiano, quia culpa in dubio non præſumitur, ſed
probanda eſt. *l. exceptione.* & ibi Bart. *ff. de fideiuſſ.* glo. & Doct. *in l. ſi*
quis ex argentariis. §. fin. ff. de eden. glo. Bart. & Doct. *in l. ſecundum credi-*
tor. C. de pign. actio. Ideo vt culpa ceſſet, præſumitur quis feciſſe in
rebus alienis quod in ſuis ſolitus eſt facere. Angel. *in l. ſed ſi da-*
mnum. §. 1. per illum tex. ff. de pecul. Similiter præſumitur quilibet fe-
ciſſe quod alius veriſimiliter faceret, ne alias culpa præſuma-
tur. Bart. *in l. ſi cum venderet. §. fin. ff. de pigno. actio.* Deciſ. Neapol. *deciſ.*
13. column. 14. ¶ Secundo, poſito & non conceſſo, quod Illuſtriſſ.
Marchio partem habeat in caſtro Marſaliæ reſpectu vtilis do-
minij, culpa tamen domino Sebaſtiano imputari non poteſt
ſi id egit reſpectu partis ipſius Marchionis quod fecit p[illegible] parte
ipſius dom. Sebaſtiani. *l. heredes. §. non tantum. ff. famil. erciſc. l. ſocius*
ſocio. ff. pro ſocio. l. ſi conſtante. § ſi maritus. ff. ſolut. matrim. ¶ [illegible] culpa
imputari non poteſt ſi quis id non fecerit quod facere non po-
tuit. *l. cum quidam. §. ſi pupillo. ff. de vſuris. cap. quia diuerſitatem. de conceſſ.*
praeben. c. 1. §. ſolet autem vbi glo. in verſ. potuerit. de reſtit. ſpol. lib. 6. Ol[illegible] *in*
conſ. 242. Tota præſens. column. 3. modo imputatur dom. Sebaſtiano
milites & cuſtodes deſtinauerit ad Caſtrum Marſaliæ in quo
dominus ius haberet, ſed dico quod cum dominus Sebaſtia-
nus etiam ius haberet, & quidem fortius quoad vtile domini-
um, potuit milites delegare pro conſeruatione iuris ſui, quia vt
ſupra dictum eſt *in 13. fundamento circa dolum.* poteſt ſocius & de-
bet rem communem tueri & defendere, quæ defenſio pro par-
te explicari non poteſt cum ſit factum indiuiduum. *d. l. in execu-*
tione. § in ſolidum. ff. de verb. oblig. itaq; cum non poſſet do. Sebaſtia-
nus partem ſuam defendere, quin defenderet & partem ſocij,
& partem ſuam indefenſam relinquere non teneretur, culpa ei
imputari non poteſt quod abſtinere debuerit à parte ſocij &
quod tangere non deberet, cum talis abſtinentia eſſet impoſ-
ſibilis. ¶ Et ſi dicatur, non obijcitur D. Sebaſtiano quod cuſto-
diam poſuerit in caſtro, ſed quod caſtrum Do. commiſſario ſta-
tim reſtitutum non fuerit. Reſpondebitur infra in reſponſione
ad contraria & iam ſupra reſponſum eſt *in 17. fundamento facto ad*
purgationem doli. ¶ Quarto ceſſat culpa in dom. Sebaſtiano nam
cum credi non debeat dicẽti ſe commiſſarium principis & po-
teſtatem habere aliquid faciẽdi niſi per literas doceat, vt ſupra
dictum eſt *in 16. fundamento ad excluſionem doli.* illud quærendum
erat an voluntas domini eſſet vt reſtitueretur caſtrum militib.
captiuis, quod ipſum d. Sebaſtianus aut agens pro eo aliter ſcire
voluit quam per aſſertionem ipſius dom. Rufinetæ. ¶ Quæren-
do igitur veritatem ab ipſo fonte, & domino nuncium ad eum
mittendo, fecit dominus Sebaſtianus quod debebat cum alter
credere non teneretur, † ſed faciẽti quod debet culpa adſcribi 16
non poteſt. *l. vtiq. § culpa. ff. de rei vendica.* Rom. *in conſ. 395. Vt rei cla-*
rior. col. 2. Similiter non poteſt obijci culpa do. Sebaſtiano ſi non
credidit verbo domini Rufinetæ, cui credere non tenebatur.
Curtius *in conſi. 11. colu. fin. verſic. cum igitur nondum.* ¶ Quinto ceſſat
culpa, quia dominus Sebaſtianus fecit quicquid potuit ne [illegible]-
deretur iura domini in aliquo lædere: nam primo audiens ad-
uentum Illuſtriſſ. Procæſaris, & eo nomine cuſtodias auge[illegible] in
locis præſidiorum, ſimul & rumorem intelligens de morte do-
mini conſilium à multis petiit quid eſſet acturus, binas teſti-
moniales rogauit proteſtationis ſuæ quod iura dom. violare
non intenderet, licet Claudius de Bona ſecundas recipere no-
luerit, vtpote odioſus & inuiſus ipſi dom. Sebaſt. deinde ad do-
minum bis nuncium delegauit virum religioſum & ipſi domi-
no notum, gratum & familiarem vt domini voluntatem co-
gnitam haberet cum domino Rufinetæ credere non tenere-
tur. In tanta igitur diligentia faciendo quicquid fieri po[illegible]et
in ſimili caſu, non poteſt non culpa ceſſare. *reg. impetrari. libr. 6.*

Bald.

Bald. *in conſi. 48. Viſo themate prædicto in princip. lib. 5.* ſatis eſt enim ſi
homo facit [illegible] *cap. breui. de iureiur. c. facit homo. 22. q. 2.*
& ſi generali ei credi non debet dicenti ſe principis commiſſa-
rium, niſi [illegible] doceat, qui hic dicemus ſtante fama tam
longa & [illegible] de morte ipſius domini, quo caſu multo
probabilius [illegible] poterat de non poteſtate ipſius domini
Rufinetæ, [illegible] exceptione ipſius domini Sebaſtiani?
¶ Sexto ceſſat culpa, [illegible] cuſtodia & munitio caſtri in tanto du-
bio [illegible] ob ſolum aduentum Procæſſitis maxi-
me [illegible] Marſaliæ contra ipſum do. Seba-
ſtianum, [illegible] plus [illegible] & permiſſa tendens ad con-
17 ſeruationem [illegible] † culpa quælibet etiam leuiſſima abeſſe
præſumitur [illegible], qui ſpeciem dant rei licitæ, niſi contrarium
probetur. *c. [illegible] & c. inter nos. de homici. lib.* quæ iura ad
hoc citat Bald. *in conſ. 222. Viſis prædictis articulis. lib. 5.* ¶ Septimo culpa
ceſſat, nam vt [illegible] imputari non poteſt dom. Sebaſti. hæc cu-
ſtodia & munitio caſtri tanquam euidenter licita nec ſine cau-
ſa facta, tantum [illegible] tatur quod caſtrum ſtatim remiſſum non
ſit etiam quod remiſſio retardata non eſſet, facto & culpa dom.
Rufin. [illegible] captiuationem ſine mandato deſiderantis
prout re vera tardata eſt, tamen cum breui poſtremiſſum fu-
erit, culpa imputari non poteſt ex quo ſi paulo ante remiſſum
eſſet, data tamen remiſſio nihilomagis profutura fuiſſet. atque
illa ſube [illegible] *l. quoties § nec plus quam. verſ. ergo & hoc ſuperius. vbi gloſſ.
in verſic. nihil ff. de adminiſtrat. tutor.* quem text. ad hoc in ſimili citat
Aret. *in conſilio 149. Viſis diligenter. column. 4. in fin. verſic. non obſtante alle-
gata in contrarium.* ¶ Octauo ceſſat culpa, quia illa dilatio reſti-
tuendi non fuit habita in odium domini, ſed ob cauſam inde-
mnitatis ipſorum militum captiuitatem certe non merentium,
& donec certior dominus factus eſſet de facto captiuitatis de-
ſideratæ: ſed qui aliquid non facit pro damno euitando in cul-
pa non dicitur, ideo pro vitandis damnis poſſumus excommu-
nicatos non vitare. Abb *in conſilio 60. ante fin. lib. 1. per tex. in c. ſi vere
de ſentent. excommun.* & dicit Abb. quod Innocen. ibi hoc ſentit in
princip. ¶ Nono culpa non præſumitur nec præſumi poteſt
contra dominum Sebaſtianum: nam (vt dixi) verbo domini
Rufinetæ captiuitatem militum deſiderantis credendum non
erat ſine literis domini, ergo aliter docendum erat de mandato
& voluntate domini per ſcripturam & literas domini. itaque
antequam appareret de declaratione voluntatis domini culpa
imputari non poteſt dom. Sebaſtiano talem declarationem ex-
pectanti. Paul. de Caſt. *in conſilio 326. De primo quæſito. lib. 1.* vbi ſi te-
ſtator mandat heredi vt conſtruat capellam in loco declarãdo
per executores, non poteſt heredi non conſtruenti culpa im-
putari antequam executores locum declarent. ¶ Decimo in
tanto dubio & diſcrimine poterat dominus Sebaſtianus pro-
babiliter credere quod Illuſtr. Marchio ſi viueret, caſtri cuſto-
diam & munitionem verisimiliter eſſet permiſſurus tanquam
illud fieret ad communem vtilitatem, ergo delictum aliquod
in domino Sebaſtiano conſiderari non poteſt, nam in delictis
voluntas & propoſitum conſideratur. Ideo ſi quis vtatur re
aliena credens dominum id permiſſurum, furtum non com-
mittit. *§ placuit. inſtit. de obligat. quæ ex delicto naſcunt.* Quid hic dice-
mus in re non omnino aliena ſed communi, in qua ipſa maio-
rem non paulo poteſtatem habet ſocius quam extraneus o-
mnino. ¶ Vndecimo culpa non imputatur quando ex illa da-
mnum non contingit. *l. ſi vehenda. § 1. verſ. Paulus ff. ad legem Rhod. de
iactu l. & in totum. ff. de impenſ. in reb. do. l. ſi alius. § ceſſ & alia. ff. quod vi
aut clam. l. ii. qui ff. de actio. & obligat.* Bart. *in l. ſi vt certo. § nunc viden-
dum. ff. commoda.* Sed quod damnum ſuſtinuit dominus ex tali
munitione & cuſtodia caſtri, quod ipſum voluntate eius com-
perta continuo remiſſum ſit? ¶ Duodecimo vbi alias culpa
conſiderari poſſet, illa tamen ceſſat propter qualitatem perſo-
næ ipſius domini Sebaſtiani viri notorie probatiſſimi. Alexan.
in conſ. 50. in fin. libro 1. vbi quod culpa quæ aliis præſumitur con-
tra aliquem, ceſſat ſi probetur de diligentia & vigilantia eius
quod ſolitus eſſet diligentiam adhibere. *arg. l. argentum. ff. commo-
dati. & leg. non omnes. § a barbaris. ff. de re milit.* ¶ Decimotertio non
debet quis petere id, cuius contrarium poſtulaturus non eſſet.
l. rata. C. de reſcind. vend. l. penult. C. de ſolutio. Sed finge caſtrum Mar-
ſaliæ interceptum in aduentu Procæſſitis, quid tunc dictus erat
Marchio dom. Sebaſtiano. Tu Vaſalle proximior caſtri Mar-
ſaliæ timore accepto de aduentu Procæſſitis, an non illud cu-
rare debebas vt munitum caſtrum fieret annona & cuſtodi-
bus? quod ipſum cum factum non ſit, feudo priuandus es, quia
vaſallus negligens rem feudalem aut illi deteriorans feudum
amittit. Calde. *in conſ. 6. in tit. de feudis.* Itaque res ita acta ad caſtri in-
columitatem, non culpandus videtur dominus Sebaſtianus,
ſed diligentia eius & bona fides potius cõmendanda. Et quod
ab eo factum eſt, illud ipſum ex lege fidelitatis permiſſum, imo
iuſſum videtur in illis verbis quæ ad damni vitationem perti-
nent. ¶ Decimoquarto egit Dominus Sebaſtianus quod no-
torie ſolitum eſt fieri, quia in periculis & dubiis conſueuerunt
muniri caſtra victu & armatis, ſed culpa imputari non poteſt
facienti quod ſolitum eſt fieri. *l. 3. ff. ad Macedonia. l. quæ ſit fugitiuus.
§ apud Labeonem ff. de ædil. edict. l. 1. C. de pign. actio.* Ideo culpa non im-
putatur cuſtodi animalium dimittenti equum in paſcuis, quem
lupus comedit, quando ita erat conſuetudo dimittendi. *glo. in l.
ſi negotia. in verſ. ſit ſolidis. ff. de negoc. geſt.* Pet. & Cyn. *in l. 3. Cod. de
epiſc. audien.* Et [illegible] ad hæc poſſem cumulare, ſed non
expedit. ¶ De [illegible] vltima derogant prioribus. *l. pacta no-
uiſſima. C. de pact.* & poſteriores præſumptiones derogant prio-
ribus. Calcar. *in conſ. 100. column. pen. in fin.* [illegible] vbi pars peius &
crudelius interpretando, mali aliquid ſuſpicari aut præſumere
vellet contra dominum Sebaſtianum, talis tamen ſuſpicio o-
mnino tollitur ex facto poſteriori ſubſecuto, quia [illegible]
voluntate domini reſtitutum fuit caſtrum. In [illegible] nihil
aliud dicam niſi quod exitus acta probat, in prima conſtitutio-
ne eorum *in leg. ant. ſ. l. a. § euentus. ff. de pœnis l. non intelligitur. § quando
autem. ff. de iure fiſci. l. rem non nouam § fin. C. de iudi. l. iure noſtro. § pe. ibi
euentu in te locata rei declarabit ff. de teſtam. tute l. qui rem l. 1. & 3. reſpon. ff. de
ſolutio. l. qualem ff. de reb. dubiis.* Exitus autem [illegible] obedientiæ & re-
miſſionis caſtri ad mandatum domini. Itaque quis illud cogi-
tare aut loqui audeat malam fuiſſe intentionem do. Sebaſtiani
contra dominum? Sed enim declaranda videtur voluntas do-
mini Sebaſtiani ab euentu remiſſionis ſubſecuto non etiam ab
aliis ſuſpicionibus ab hominibus excogitatis. ¶ Decimoſexto ex
teſtibus tam fiſci quam ipſius dom. Sebaſtiani probatur clariſ-
ſime, quod tenebatur caſtrum communi nomine marchiona-
lis excellentiæ & ipſius D. Sebaſtiani, & ita proteſtatus fuit ipſe
Dom. Sebaſtianus coram officiario Ciliaij & Claudio de Bo-
na, licet de Bona opus illud bonum operari noluerit proteſta-
tionem admittere recuſando. Itaq; ſtantibus talibus proteſta-
tionibus quas ipſas milites etiam interrogati, cuius nomine in
caſtro eſſent, approbauerunt, res videtur clara quod animo do-
mini non intenderet do. Sebaſtianus in aliquo derogare, nam
proteſtatio etiam vocatum animum declarat proteſtantis, quia vbi
actus † dupliciter poteſt intelligi, eo modo intelligitur, qui de- 18
claratur per proteſtationem. *l. Neſennius ff. de nego. geſt. cap. cum in.
de conſtit.* vbi Innoc. & Docto. Bald. *in conſ. 405 Proteſtatio. lib. 5.* quid
hic dicemus in proteſtationibus repetitis ex qua repetitione a-
nimus proteſtantis enixus declaratur? *cap. & ſi Chriſtus. de iureiur.
gloſſ. fin. in cap. ſi quis iuratus. 2. quæſt. 3.* & oſtendit reiteratio actus
mentis perſeuerantiam Oldrad. *in conſ. 253. Factum tale eſt domina.
5. in fin.* & ſignificant verba geminata præciſam intentionem
diſponentis Bal. *in cap. eam te. colum. 2. de reſcriptis.* & pondero quod
procedunt præmiſſa etiam in ciuilibus, in quibus actus dupli-
citer intellectus non ſonat in prohibitum aut delictum vt in-
telligatur ſecundum formam proteſtationis. ¶ Quid hic dice-
mus vbi aliter intelligendo caderet actus in delictum, quo caſu
etiam ceſſante proteſtatione, intelligi debet actus eo modo
per quem delictum euitatur. *l. merito. ff. pro ſocio. l. item apud Labeo-
nem. § ſi communem. ff. de iniur. § ſi quis ſeruum. ff. de ſeruo corrupt. l. ſem-
per in dubiis benigniora. ff. de reg. iur. l. quoties. § qui dolum. ff. de probatio. l.
Titium & Manium. § perfectus. ff. de adminiſtr. tutor. gloſſ. in cap. obſit. 11.
quæſt. 3* late Bart. & Doct. *in l. non ſolum. § ſed vt probari. ff. de operis no-
ui nunci.* in qua ipſa re ſimilia ad genus infinita poſſem cumula-
re. Diſputare igitur quo animo dominus Sebaſtianus caſtrum
communitum eſſe curauerit armatis, & annona, nihil aliud vi-
detur quam lucis aut ſolis ſplendorem in dubium reuocare.
Etenim proteſtationes do. Sebaſtiani & reſponſiones militum
cuius nomine tenerent rem ipſam clariſſimam præſtant. Itaque
ceſſare oportet præſumptiones & coniecturas in re clara. *l. con-
tinuus. § cum ita. ff. de verbor. obligat. cum ſimilib.* & hic militat funda-
mentum ſupra factum ad excluſionem doli, in 19. fundamento
præſumptiones habendas & colligendas eſſe ex his quæ appa-
rent, non etiam ex his de quib. non conſtat. Accipiamus igitur
præſumptiones, ex proteſtationibus apparentibus non ab aliis
coniecturis iniquis & crudelioribus. ¶ Decimoſeptimo dico
quod dom. Sebaſt. fuit in bona fide, nam cauſatur bona fides

etiam [illegible] ignorantia [illegible] in [illegible] lu- [illegible] *in libro* 4. & tamen ignorant [illegible], quia iura nemini [illegible] ignorantia [illegible] ad præt [illegible] quod tamen, quasi et procedat [illegible] non expedit. Si ignorat [illegible] quod lucrum ſructuum, quid hi [illegible] no vitando, cuius damn [illegible] eſt q [illegible] *l. Paulus* [illegible] *ff. de* [illegible] *ignor.* [illegible] *l. 1. §. lucentiam. C. de iure delibet.* & quod [illegible] errore iniuſto, voluit Paul. de [illegible] *in conſ. 58.* [illegible] fortius voluit Bal. *in l. 1. in fi. per gloſſ.* [illegible] bona fides poteſt cauſari non ſolum [illegible] iuſta ratio [illegible] a minuſtis & temetatis, quod reponentendum menti [illegible] Alex. *in conſ.* [illegible] *7. col. 3. lib. 4.* [illegible] *quod* [illegible] *ff. de* [illegible] Quid hic dicemus vbi cauſata eſt bona fide [illegible] in Sebaſtiani ex cauſis, rationibus tam iuſtis tamque probabilibus, periculo & timore perdendi caſtri incumbente ob aduentum Cæſaris, ob odium hominum Marſiliæ qui ipſi non inuiti adducti [illegible] Domino Sebaſtiano damnum vt facerent maxime conſtante & perſeuerante ſama de morte Marchionis?

Decimooctauo, poſito, & non conceſſo, conſiderari poſſet
19 error aliquis in Don. Sebaſtiano, tamen † quoties agitur de vitan [illegible] pœna ſufficit error quicunque. Old. *in conſ. 29.* [illegible] *in fin. per tex.* [illegible] *in fin. ff. quod* [illegible] *& alia* [illegible] *quis per eum ibi.* ¶ D [illegible] nono ex præmiſſis apparet nihil actum fuiſſe per dom. Sebaſtianum in mala fide, ſed cum fide bona & ſimpliciter, ſed quod non mala fide ſit, pœnam non meretur [illegible] *§ non dixit in verſ.* [illegible] *ff. de acq. hered.* [illegible] *ff. de* [illegible] *& demonſtrat.* Bald. *in conſ. 229.* [illegible] *ad fi. lib. 5.* Paul. de Caſt. *in conſ. 205. In cauſa, qua* [illegible] *libro 2.*

Vigeſimo poſito, & nō conceſſo dominus Sebaſtianus fuiſſet in aliqua culpa, tamen pro ea teneri non debet erga Marchionem, quia talis culpa non fuiſſet ordinata contra eum, cum in [illegible] nihil [illegible] ſed ordinata erat res contra aduerſarios aduenie nte Cæſare, & ne ſubditi Marſiliæ eius inimici capitales audito rumore aliquid contra eum molirentur, ſed non punitur culpa circa id ad quod ordinata non eſt. *l. in qui. ff. de actio. & oblig. et l.* [illegible] *ff. de ſtatulib.* [illegible] *de conceſſ. præben.* Bart. *in l. 2.* [illegible] *& in l. ſi* [illegible] *§ ſed interdum ff. commod.* Idem in dolo, non enim poteſt [illegible] de dolo agere quando commiſſus eſt dolus contra alium. *l.* [illegible] *emancipatus §. fin. ff. de* [illegible] ſed contra Marchionem aut in eius odium nihil per dolum aut culpam actum eſt, nec [illegible] aliqua veriſimilis imaginari poteſt cur contra ipſum Marchionem voluerit dom. Sebaſtianus quicquam attentare, ergo, &c. ¶ Vigeſimoprimo [illegible] caſus videtur decidi per tex. *in l.* [illegible] *ff. pro ſocio.* iuncta doct. Bart. *in l.* [illegible] *ff. de furtis.* [illegible] quod in re communi non præſumitur delictum niſi [illegible] factum ex quo auferatur ſocio commoditas partis ſuæ, ſed ex iſta inuaſione caſtri non fuit ſubtracta Marchioni ſocio commoditas partis ſuæ ſi qua competat in vtili dominio: imo illa expreſſe reſeruata per reiteratas proteſtationes, & ſolicitas declarationes, dum reſponderent ad interrogatoria domini Rubneræ cuius nomine poſſeſſores aut cuſtodirent caſtrum. Deinde commoditas caſtri ad eius voluntatem dumtaxat arbitrio eius remiſſa eſt. ¶ Ex præmiſſis infertur quod etiam in culpa non fuit dominus Sebaſtianus. Culpa igitur ceſſante ceſſare debet pœna quæ pro culpa imponitur *l. in* [illegible] *Neratius. §. fin.* [illegible] *ff. ad legem Aquil. l.* [illegible] *ff. de verbor. ſignif.* [illegible] *C. de pœnis.* Ex abundanti tamen præmiſſa ſcripta videntur circa culpam, quia pro culpa pœna non imponitur, ſed dolus requiritur, culpa enim videtur punibilis in leuibus vbi agetur de modica pœna pro damno dato per ſcripta ſupra in fundamentis ach [illegible] ex [illegible] ¶ Ex præmiſſis cauſa domini Sebaſtiani [illegible] tacta videtur & ad argumenta con [illegible] ex præmiſſis reſponſum videtur. Plane [illegible] reſpondebimus in ſpecie [illegible] argumentum quod dominus Sebaſti [illegible] contumax in [illegible] reſtituendo caſtrum [illegible] videtur in crimen

læſæ Maieſta [illegible] contumax. [illegible] iudici de [illegible] *fundamentis* [illegible] mini Rubneræ [illegible] aut agens pro [illegible] M [illegible] res capiendi [illegible] conſtaret [illegible] nium Rubneta [illegible] tumax dicitur qui [illegible] *l. a* [illegible] *ex qua* [illegible] *conſ. 245.* [illegible] examinato [illegible] 449 *in* [illegible] *2.* [illegible] plenam qui non tenetur obedire. ¶ [illegible] non ſolum non cuiuſ [illegible] de tali po [illegible] poſt caſt [illegible] conſt [illegible] de [illegible] Marchioni non erat, [illegible] ſubiumne [illegible] gerentur & de [illegible] geſtum fuit per dominum R [illegible] eius formam [illegible] contumaci [illegible] conſiderari non poteſt, ita eſt [illegible] *ff. de* [illegible] vbi quod contumac [illegible] poteſtio [illegible] agentē cum [illegible] ſtum non [illegible] & ibi [illegible] m R [illegible] *captura* [illegible] Fe [illegible] *Caſus talis eſt, quidam* [illegible] ſuum obligatum ante [illegible] quam contra contuo [illegible] nullum, cum monachi [illegible] abbati, ſed in [illegible] ¶ Tertio reſponde [illegible] caſtri imputanda eſt [illegible] aut formam [illegible] *ſcript cum ſimilib.*

Quarto reſpondeo, poſito & non conceſſo [illegible] R [illegible] mandatum habuiſſet ita [illegible] fidem [illegible] excuſari [illegible] videt [illegible] omnino [illegible] Sebaſtianus [illegible] ſauit parere in [illegible] Rubneræ [illegible] bere ad d [illegible] minoo eſſe [illegible] ſto erat & [illegible] ad arb [illegible] Itaq. contumax dici non poteſt do [illegible] *fundamento* [illegible] dominum R [illegible] cum dubitaret de [illegible] Seba [illegible] te, an talis eſſet volunt [illegible] domini ſeu au dor [illegible] ple [illegible] informa [illegible] de fide eius bona [illegible] caſtri, & ei nomine ab eo ipſius domini volun [illegible] let intelligere, contumax dici non pote [illegible] veritas haberetur: nam quando ſcriptum ſuperio [illegible] deuiat ab honeſtate & iuſtitia non tenetur officia [illegible] immediate parere, ſed ſuper [illegible] poteſt, & ad reſcribere. *l. ſi vendicari. C. de pœnis* vbi Angel. dicit non [illegible] dum reſcripto principis [illegible] pœnam quam delictum videatur poſtulare ſed debet [illegible] ſuperſedere, quæ lex edita eſt a [illegible] odium imperatore [illegible] ſtantiam diui Ambroſ [illegible] *apud Theſſalonicam.* 3. quem te [illegible] pingendum aut o [illegible] Land *in tra. rubr. de Conſiliar. Principum in 6. c.* [illegible] Illum [illegible] text. [illegible] Iaſ. *in l. debitoribus. colum. 3. in fin. verſ. 2. quando Princeps ff.* [illegible] lum enim text. ſicut aureum & ſing. [illegible] *2. not. C. de ſumm. Trin. & Fid. Cathol.* Ideo gl [illegible] *§ deinde in verſ.* [illegible] *in auth. de mand. princ.* arguit prælatos [illegible] dent reclamare contra literas Papæ, & pu [illegible] congerunt Moder. *in c. ſi quando de reſcript.* [illegible] dominum Rubneræ volent [illegible] capt [illegible] erat iniuſtum & inhoneſtum, nam [illegible] mino Sebaſtiano ad bonum finem ſeruand [illegible] tanto conſtante timore & periculo probabili [illegible] ſtrum in quo dominus Sebaſtianus [illegible] habere [illegible] micha, imo & in quo m [illegible] ſidum ſuis pr [illegible] bat, in nullo igitur milites pe [illegible] *damento* [illegible] *purgationem & excluſionem.* [illegible] peccauit dom. Sebaſt. in ſecundum [illegible]

expectare vbi de prima vere & legitime apparuit [illegible] de [illegible] pla tamen prima iuſſione nunquam legitime [illegible] aſſertionem dom. Rufinetæ cui credendum [illegible] ſis vt ſupra ſæpius d[illegible]m eſt. Etenim [illegible] ſecundæ iuſſionis à lege [illegible] ſtituitur quando prima iuſſio videtur contraius aut honeſtatem, non debet quis puniri expectando ſecundam iuſſionem quia quod fit lege permittente, puniri non mere-tur. *l.* [illegible] *C. de adult.* alias deciperetur qui ab authoritate legis *contra l. fin. C. de his qui venia ætatis impetra.* ¶ Quinto reſpon-

20 deo quod contumax in non faciendo punitur quando fuit probabilis cauſa aut impedimentum ita non faciendi. Bald. *in conſ.* 15. *Statuto cauetur quod certus ordo in fin. lib.* 2 vbi quod contumax in non reſpondendo non habetur pro confeſſo quando fuit probabilis cauſa vel impedimentum non reſpōdendi. Sed in d. Sebaſt[illegible] no fuit cauſa multiplex plusquam probabilis [illegible] non [illegible] ndi caſtrum cum militibus captiuis ad arbitrium do. Rufinetæ per ſupra ſæpius dicta, ergo, &c. ¶ Sexto & magis [illegible] pro reſponſione adduco Oldr. *in conſ.* 70 *In quæſtione propoſita an* 1 *dubio.* vbi quod nō reſtituens caſtrum principi contumax non [illegible] quando iuſte ignorabat an [illegible] eſſet reſtituendum vel non, quia ſucceſſiſſet in locum alterius, & eodem quod contumax non dicitur qui iuſte malitiæ [illegible] modo do. Sebaſtianus iuſte prætendebat milites in captiuitatem dandos non [illegible], &c. ſtringo fortius dictum Old. quia in caſu iſto [illegible] rum Marſaltæ notitiæ erat & eſt ipſius dom. Sebaſtiani pro defenſ[illegible], quod non erat in caſu Old. ¶ Septimo reſpondeo quod [illegible] metus etiam leuis non cadens in conſtantem v[illegible] *in l. ea quæ. colu.* 3. *verſi. quero nunquid quælibet* [illegible] *quomodo* [illegible] Sed hic metus comminatus captiuitatis militum [illegible] erat, imo maximus in virum cadens etiam conſtantiſſimum, quod aſſerens ſe princip[illegible] comminetur militibus & [illegible] ad arbitrium deliberet. ¶ Octauo reſpondeo poſito, & non conceſſo, contumacia conſiderari poſſet, poſito [illegible] conceſſo, talis contumacia [illegible] domino Rufinetæ & facto ei [illegible] non poſſet. prout [illegible] eam oportet, captiuitatem [illegible] do ſine mandato domini [illegible] contra eius formam, [illegible] talis contumacia dom. Sebaſt aſcribi non poſſet, ſed ipſis militibus nolentibus in captiuitatem adduci ob cauſam captiuitatis caſtri remiſſionem [illegible] ſtantibus, ob id coactus fuit dom. Sebaſt. quærere militum incolumitatem quos ad caſtrum deſtin[illegible] ſcribendo ad dominum: itaq; ex facto mil[illegible] pœnam ipſe do. Sebaſt. pati non debet *l.* [illegible] *C. de pœ. ſu.* nec grauari quis debet [illegible] facto alterius. *l. ſi quis in ſuo.* §. *legis. C. d. inoffic. teſtam.* ¶ Nec obſtat talis recuſatio prouenien[illegible] ipſius do. Sebaſt. qui milites illuc miſit, nam [illegible] quod talis culpa, ſi culpa dici poſſet prout non eſt, non [illegible] ad illud factum recu[illegible] cū miſſi fuerint milites [illegible] finem [illegible] ad com[illegible] vtilitatem Marchionis & ipſius do. Sebaſt ad obuiandum periculis incumbentibus non in odium [illegible] quod ipſius principis. ob id puniri non poteſt culpa in eo qu[illegible] inata non fuit, vt ſupra dictum eſt *in vige. fundamento facto ad excuſation. in culpa.* ¶ Nono, poſito, & non conceſſo, contumac[illegible] conſiderari po[illegible] in dom. Sebaſt. ad illa tamen excuſaretur ex cauſis ſupra commemoratis, quod nihil putaret neq; putet ſe deliquiſſe muniendo caſtrum cōtra aduer[illegible] in quo ipſe caſtro ius haberet [illegible] habeat ob id quod præmio milites [illegible] eſſent potius quam [illegible] iuitate, quæ cauſæ [illegible] iuſtę & probabiles. Cum tamen [illegible] contumacia excuſet cau[illegible] quælibet etiam iniuſta *glo. in l.* 1. *ff. ſi quis in ius vocat. non obtemp. & in l. ex. conſenſu* §. *ſi* 1 *ff. de appell.* Rom *in d. conſil.* 214. *l. ſi a captiura. colu.* 2. [illegible] *& ſi dicatur.* Et ſi dicatur, duplex hic videtur contumacia. Prima, quia ſtatim atque do. Rufineta fuit in loco Marſaliæ & præcepit caſtri remiſſionem, illud reſtitutum non eſt. Secunda, quando noluit reſtituere cum militibus captiuis: ſed à principio non petebatur militum captiuitas. ¶ Reſpondeo quod milites miſſi erant cum mandato ne cui reſtituerent caſtrum in-iuſſu [illegible] dom. Sebaſt. verens vt ne impoſtura aliqua fieret adu[illegible] indiſte aduerſario & forte cui [illegible] bus ſubditus eidem d. Sebaſtianus is. ob id [illegible] volebat dom. Sebaſt. quomodo res haberet an marchio viueret, ad quem propterea nuncium deleg auit, licet nuncius iter diſtulerit credens rē compoſitam. Ideo dom. Sebaſt. veritate comperta, ſtatim literas & nuncium miſit ad cauſam remiſſionis caſtri: ob id contumacia al[illegible] dici non poteſt per dicta ſupra circa hanc ipſam contumaciæ cauſam,

[illegible] omnino cōtraria, qu[illegible] caſtrum remittere, & [illegible] ad marchionem [illegible] de vita eius, quo ſuperſtite à mandatis eius minime diſcederet. ¶ Non obſtat ſecun[illegible] argumentum quod d. Sebaſt. [illegible] iuramē[illegible], quia retorqueo fundamentum quod imo rē egit ex [illegible] caſtrum muniēdo ad communem vtilitatem [illegible] & ipſius munientis ſocij in caſtro damnum & [illegible] vitaretur nam † prohibens damnum

dari [illegible] ne damnū detur *l. in lege. ff. l.* [illegible] vbi conductor [illegible] tenetur etiam cuſtod[illegible] dat [illegible] dolum malum [illegible] *l. inter ſtipulantem* [illegible] aliquid per ſe non [illegible] *l. ex illa ſti. latione per te non* [illegible] qui iurauit damn[illegible] tenetur præſtare [illegible] etiam in forma [illegible] Quæ cum ita ſit, lapidatur d[illegible] Seb[illegible] opere, quod muniret [illegible] militibus, annona [illegible] & [illegible] vtilitatē prout ita proteſtatus [illegible], ad effectum, vt ne dom. no ſi viueret aut eius ſucceſſorib. ipſi ue do[illegible] Seb[illegible] damnum daretur in eius [illegible]. ¶ Non obſtat [illegible] argumentum [illegible] d. dominus Sebaſtianus videtur illuſt. Marchionem ſpoliaſſe, [illegible] ipſius Marchionis [illegible] iuxta teſtimonium [illegible] domini Bonifacij de Saluc[illegible] domini Chiſoni: quia [illegible] ſpondeo quod ſpoliatio conſiderari non poteſt [illegible] proteſtatus [illegible] caſtrum cuſtodiri mā[illegible] etiam nomine marchionis, & [illegible] ſidet cuius nomine poſſidetur. *l. quod meo ff. de acq. poſſ.* Am[illegible] dico quod [illegible] marchio ipſe [illegible] de poſſeſſione caſtri, [illegible] ex quo alij [illegible] tenentes [illegible] nomine [illegible] poſſeſſionem ſuam crediderit antea poſſeſſ[illegible] *l.* [illegible] *ff. de vi & vi arma.* Ideo ego ex[illegible] petit mihi interdictum recup[illegible] *d. l. 1.* §. *non alia autem ff. de vi & vi arm.* Paul. [illegible] *Ad confirmatio nem nobili. lib.* 1. Q[illegible] expulſus, [illegible] nomine [illegible] ¶ Secundo reſpondeo, in [illegible] Bon[illegible] ſingularis non probat. *l. Marcellus* [illegible] *cum ſimil.* ¶ [illegible] negata admiſſio militum [illegible] ſed quia munitum [illegible] marchionis & ob [illegible] incluſa [illegible] ipſum marchionem per quem veritas haberetur [illegible] fuit breuis mora dilatio, dum reſponſum marchionis [illegible] eſſet, ob id non dicitur dominum ſpoliare, qui ipſius domini voluntatem expectat cuius ipſi [illegible] omnino obtemperet, vt in præcedentibus abunde dict[illegible] eſt, & [illegible] d. Bonifacius in eius repetitione dixit conclu[illegible] inter [illegible] partem de habendo voluntatem dom. m[illegible] teſtimonio eiuſdem d. Bo[illegible] clara. ¶ Quarto reſpondeo cum rumor [illegible] marchionis [illegible] fuiſſet illius munitioni [illegible] turſi Marſaliæ & aduerſa [illegible] appropinquare [illegible] potuerunt ager domini Sebaſtiani non [illegible] bis & præceptis domini Rufinetæ & ipſius dom. [illegible] de vita ipſius Marchionis, quod breui [illegible] nuncio obe[illegible] quam [illegible] iuſtam & probab[illegible] debet nui prius conſtet de [illegible] cauſæ. *arg. l. diem* [illegible] *mili.* nec imputandum videtur illa [illegible] veritas haberet, ne [illegible] do. Sebaſtiani in [illegible] tempore tam [illegible] *fundamento ad excuſ.* [illegible] permiſſum dicitur factum, quod [illegible] ad conſeruandum ius ſuum, quod ſine [illegible], qui interim dum veritas rumoris, & [illegible] expectatur [illegible] ipſius domini [illegible] nec intereſſe aliquod ipſius verſabatur ex quo nomine ipſius caſtrum tenebatur. Ceſſ[illegible] autem intereſſe, ceſſat ius agendi, ceſſat & pœna *l.* [illegible] §. [illegible] *ff. ſi quis cautio. l. fin.* §. *& ſi* [illegible] *ff.* [illegible] *ratam hab.* quæ iura ad tale propoſitum citat Roman. *in conſil.* 193. *Negari non poteſt.* vbi ſi reus promittat de iudicio ſiſti, &

[illegible] ndo [illegible] pœna tunc licent [illegible] licen- [illegible] tep [illegible] itetur per [illegible] [illegible] lactat [illegible] ne ceſ[illegible] [illegible] *in l. ex conuen* [illegible] *C. de pact.* ¶ Q[illegible] d[illegible] ſumut & [illegible] delicto, vt [illegible] licitum eſt n[illegible] damen[illegible] exclusionem d[illegible] dittare d[illegible] [illegible] not & fama *l. ad legem §. qua- [illegible] ff. de iure patron.* [illegible] *arguendo ab oppoſito.* nam cau- ſa [illegible] non ceſſ[illegible] nte n[illegible] ceſſat [illegible] diſcip[illegible] *l. ff. de his qui ſunt ſui* [illegible] onceſſ[illegible] nte, non [illegible] reſ- te[illegible] & fama, ob id [illegible] impu- ta[illegible], neque agentibus pro eo [illegible] ſtru[illegible] ſerre voluerunt an domi- nu[illegible] per [illegible] æmulantium in d[illegible] en pe[illegible] ¶ Non [illegible] ſtat quartum ar- gumentum [illegible] communi v[illegible] tange do de [illegible] ne- gatiui, m[illegible] ſuit rei ſua ut [illegible] nes teſte [illegible] per reſpon[illegible] nullum, qui [illegible] ſponde- runt [illegible] caſtrum tenere [illegible] nomine ipſius M[illegible] , vt ſu- pr[illegible] unde dictum eſt ¶ Non obſtat aſ[illegible] rea ſubtractio victua- lium contra voluntatem dominorum, quia t[illegible] eſt reſpõſio, nam illa munitio caſtri egebat celeritate & [illegible] b vtilitatem publicam, nõ ſolum ipſius Marchionis domini Sebaſtiani, ſed etiam ipſorum ſubditorũ Maria [illegible] ne intercepti fierent de im- proniſo. Sed pro cauſa vtilitatis publicæ vbi mora eſſet pericu- lum allatura, licitum eſt leges transgredi. *l. de pupillo. §. ſi quis ipſum.* vbi Modern *ff. de oper. noui nunc.* Imo tali caſu quando periculum eſt in mora licitum eſt non habenti iuriſdictionem punire vſq; ad vltimum vitæ ſupplicium, vt per Iaſ. poſt alios *in l. 1. colum. 10. verſ. quod vltimum* [illegible] *ante num. 58. ff. de officio* [illegible]. Quid hic di- cemus vbi agitur de modico præiudicio certorum victualium pro quibus nullus conqueritur de ipſo domino Sebaſtiano iu- riſdictione non carente ¶ Secundo reſpondeo quod pro cauſa victualium nullus comparet accuſator, ob id ſine accuſatore condemnari non debet *l. reſcripto. §. ſi quis accuſatorem ff. de muner. & honor.* vbi glo. citat dictum Domini. Quis te accuſat? nemo Domine, &c. [illegible] eo di[illegible] ſolet communiter [illegible] gitimi non fue- rit accuſa[illegible], non fatigetur accuſatus. [illegible] ideo non accuſatur dominus Sebaſtianus à dominis victualium, quia ac- cepta fuerunt cum promiſſione ſatisfaciendi & conuenit inter eos, ob id nihil eſt quod inquietetur victualium nomine ¶ Nõ obſtat quod dicitur attentatum contra Claudium de Bona lo- cum tenentem, quia ſi videantur teſtes ipſe fuit author rixæ po- nendo manum ad dagham aut pugionem cum nihil diceretur aut fieret contra eum cur ita [illegible] ret, ob [illegible] ipſi prouocanti eſt imputandum. *l. 1. §. cum arietes. ff. ſi quadru. pau. fec. dic. l. quoniam multa. C. ad legem Iul. de vi. s. fin. de mener.* nec dicitur incipere qui peri- tam quid agit, ſed qui ad iram prouocat, quia princeps culpæ dicitur à quo incipit malitia, ſecundum Ariſtotelem relatum per Bald. *in conſil. 143. Super quæſtione vertente inter Chriſtophorum. co- lum. 2. libro 2.* ¶ Secundo reſpondeo quod cum principium con- gregationis & miſſionis militum fuerit licitum ob bonum pu- blicum, & commune ad ſalutem & incolumitatem caſtri ab aduerſarijs licet m[illegible] congregati, & miſſi mali quid egiſſent etiam percutiendo aut occidendo, non tamen tenetur man- dans qui principium & operam dedit rei licitæ. Bal. *in conſi. 219. De rebus domini. lib. 2.* nam quando initium eſt licitum & habet cauſam licitam, inſpicimus initium non finem, qui ſequitur *l. quod ait §. quod ait.* & ibi Bartol. *ff. de adulter.* Nec iſto caſu quando initium eſt licitum & operam quis dat rei licitæ, procedit regu- la [illegible] qui occaſionem damni dat, damnum dediſſe videtur. glo. [illegible] *ſicut nobis in verbo, dederimus. de teſtibus.* Curtius iunior *in con- ſilio* [illegible] *colum. penult. circa med.* ¶ Tertio reſpondeo, poſito, & non con[illegible] o, dedi[illegible] et dominus Sebaſtianus operam rei illicitæ, n[illegible] amen teneretur pro iniuria Claudii de Bona, quia factum ip[illegible] us domini Seba[illegible] ni non erat ordinatum con[illegible] ipſum de Bona, quo caſu ceſſa[illegible] regula, quod qui oc[illegible] ionem damni dat, [illegible] mnum dediſſe videtur, quæ regula non procedit quando il- [illegible] o caſio non erat or[illegible] inata ad illud damnu[illegible] m. Alber. de Ro [illegible] *in l. qui occ.* [illegible] *§. fin. ff. ad legem Aquil.* Alex. *in conſil. 140. colum. 3. cir- ca med. verſic. pro ho. quia vbi de* [illegible] *2.* Soc. *in conſil. 56. colum. fin. li- bro 2.* late Dec. *in conſil. 234* [illegible] & non ſolum factum domini Sebaſtiani [illegible] ordinatum [illegible] d aliquod damnum

[illegible] d[illegible] [illegible] Maſa [illegible] cum ad [illegible] potuit [illegible] uin ſuu[illegible] Sebaſtianu[illegible] Bona iudic[illegible] dem[illegible] e Bona n[illegible] Sebaſtianum ¶ E[illegible] ni Sebaſti[illegible] mnẽ contro[illegible] dum. *vulg. l.* [illegible] *& dicam cum* [illegible] *ea lege.* [illegible] quod pœnæ non [illegible] rogat [illegible] net. Sed enim agitur cauſa apud [illegible] to iudicio [illegible] cto n[illegible] ſtatutum, iuxta [illegible] ro; Beati qui [illegible] iudicium, & faciu[illegible] nni tempo[illegible] In meioui[illegible] Pſalm. Si vere vtique [illegible] am loqui[illegible] li hominum. [illegible] ciat inter virum & virum [illegible] prote[illegible] omn[illegible] ſideratis, in ſ[illegible] picionem [illegible] uam add[illegible] p[illegible] dominu[illegible] ch[illegible] cludendo. Saluo ſemper [illegible] 1547. Aymo Cranett ex S[illegible] ¶ Ad dubium quod factum [illegible] quod factum militum nõ [illegible] cet domino Sebaſtiano, [illegible] quo principium [illegible] *l. quod ait. §. quod ait. ff. de adulter.* pulchre Paulus de C[illegible] ſtro *in conſ. 45.* [illegible] *ſexto dubio libro 2.* & quod ſupra dixi [illegible] mino non nocere, vt dicatur dominu[illegible] in m[illegible] Roman. *in conſilio 289.* Addo Iaſon *in leg. non ſolum. § 18. verſicul. tertio limita ff. de operis noui nunciat.* vbi quan[illegible] ſtatio ad cauſandum domini vitium. non ſuffi[illegible] procuratori, niſi procurator intimet domino. ¶ S[illegible] ſpondeo, quod etiam factum militum fuit licitum & [illegible] nam cum principium fuerit notorie licitum, iniuſtum [illegible] ſideretur domini Ruſinetæ quod exponos ſe darent [illegible] ſaute delicto ceſſare debet pœna *l. ſi putatur. l. qui occidit* [illegible] *leg. Aquil. ſatis peruerſum 60. d. reg. ſine culpa lib. 6.* itaqu[illegible] ſtitia præcepti, potuit & debuit expectari ſecunda iuſſ[illegible] ximus in prioribus ſcriptis. ¶ Nec dicatur quod domin[illegible] ſinetæ ignoraret principium eſſe licitum quia ei [illegible] non debet alii nocere. *l. inter ſtipulantem ff. de iuris & fact. ign.* [illegible] *autem §. ſi quid cum pupillo. ff. de his quæ in fraud. credit.* P[illegible] ſtro *in conſilio 94.* *Clarum eſt in iure. colum. 2. ante med. libro 2. in conſilio 241 colum. 5. ro ſicul. quinimo dicit text. libro* [illegible] ſurdum, imo abſurdiſſimum quod ignorantia domi[illegible] redderet eius præceptum iniuſtum, & quod ex ea eius [illegible] ſitum ſit, nam ignorantia vnius ſicut non nocet [illegible] deſt, vt per Paul. *in dict. conſilio 94.* & ſicut fiſcus no[illegible] patiatur ab ignorantia domini Roſinetæ, ita nec lucrum [illegible] pere. ¶ Itaque ſunt contradictoria, quod initium domini Sebaſtiani fuerit licitum, & quod pro re licita fiant milites capti ¶ Non obſtat quod dictus Sebaſtianus elegerit milites [illegible] ales, quia negatur, imo viros elegit ſubditos regis ciues Mon[illegible] lis. ¶ Secundo reſpondeo, quod elegit viros diuites ex hon[illegible] familia & parti coniunctos in quos fidem haberet, ideo [illegible] pa non dicitur *gloſ. in dicta leg. Tutto fundus.* nam etiam du[illegible] milites accipiunt deficientes qui prius hoſti ſeruierant: quod pſum quotidie videmus, ob id tamen proditores non dic[illegible] tur, nec culpantur in aliquo ſi fide[illegible] h[illegible] bent dantibus. Finge duos fratres diuerſæ factionis, non ob[illegible] inter eos [illegible] ſtra[illegible] guinis & fidei obſeruantia. ¶ Tertio reſpo[illegible] quo[illegible] non probatur aliquos ex militi bus lecutos C[illegible] militia ¶ N[illegible] obſtat ipſi domino Sebaſtiano fuerit iniunctum de[illegible] do caſtrum, quia vt primum notitiam habuit tal[illegible] ſtatim nuncium delegauit pro remi[illegible] one, & [illegible] et m[illegible] luerint remittere, illud fuit culpa dom. R[illegible] quærentis contra ius & honeſtatem. ¶ S[illegible] und[illegible] quod neque dom. Sebaſtianus neque m[illegible] b[illegible] dite præcepto capituatis tanquam [illegible] ob id potuerunt expectare [illegible] ret

¶ [illegible]

Tertio dico quod aſſerta præcepta facta fuerunt per d. Rufinetam ipſi dom. Sebaſtiano abſenti voce præconia cum certus eſſet locus habitationis eiuſdem dom. Sebaſt. in abſente autem præſumitur ignorantia *l. iure fratres.* vbi Angel. *ff. de pactis. l. Titius. §. Lucius ff. de liberis & poſth.* late Bart. & Doct. *in l. si poteſt. ff. de acq. hered.* Abſens autem puniri non poteſt. *l. genero ff. de inſam. l. cum ancillis. C. de neceſſ. nupt. cum ſimilib.* ¶ Quarto reſpondeo, quod vox præconis paucis innoteſcit, etiam præſentibus in loco. *authen. qui ſemel. C. quomodo & quando iudic.* quid dicemus in abſente? ¶ Quinto reſpondeo, quod ſcientia præſumpta etiam ex ſama non ſufficit vbi agitur de puniendo præſentem in loco famæ. Dec. *conſ.* 327. *in fi.* quid dicemus in abſente? nam ſcientia præſumpta ex ſama non nocet abſenti etiam in ciuilibus, vt per Bart. & Doct. *in d. l. si poteſt.* Corn. *in conſ.* 213. *colum.* 3. *lib.* 4. quid dicemus in criminalibus? & in terminis citationis per proclama quod non liget abſentem, tradit Ioan. Andr. *in clemen. grauis in gl. in verſi. præconia de ſenten. excommun.* Bald. *in conſ.* 154. *Citatio lib.* 3. ¶ Sexto reſpondeo, quod ipſi domino Rufinetæ executori credendum non erat niſi in literis aut præceptis ſuis inſertus eſſet tenor ſuæ delegationis & poteſtatis, maxime cum dominus Sebaſtianus eſſet abſens à loco Marſaliæ, vt per Iaſ. *in l.* 2. *colu.* 2. *verſiculo primo effectus. ff. si quis in ius vocat. non ier.* Guido Papæ *quæſt.* 276. *in fin.* Ideo non ſufficit oblatio verbalis de dando copiam delegationis ex quo facto opus eſt, id eſt, ipſa inſertione tenoris in citatorio aut in præcepto, & ita vidi caſſari quædam expleta cuiuſdam delegati Lugdunenſis contra Venerab. dom. Franc. Rubei, Protonotarium Apoſtolicum, & Rectorem Eccleſiæ campi, quia delegatus non fecerat fidem realiter de eius poteſtate, ſed tantum illius copiam obtulerat: amplius non ſolum inſeri debet tenor delegationis in citatorio aut præcepto, ſed etiam citari debet pars ad opponendum contra ipſam delegationem, *c.* 2. *de dilatio.* quem text. ad hoc citat Pau. de Caſt. *in conſ.* 81. *In cauſa quæ vertitur inter Reuerend. Patrem. col.* 4. *circa med. verſ. eſt etiam alius defectus. libr.* 2. & ſi procedunt præmiſſa in ciuilibus, quid dicemus in criminalibus?

Tertio reſpondeo, quod cum perſona dom. Sebaſtiani certa eſſet, & certus locus domicilii in ciuitate Montisregalis, nominatim citandus erat ad remiſſionem caſtri, non generaliter voce criedæ in caſtro Marſaliæ vbi non habitabat. Ang. *in conſ.* 189. *Viſo facto. colum.* 1. *circa med. verſ. contrarium credo verum.* Amplius, vbi aduerſarius eſt incertus, ſi tamē de facili poteſt certificari, non ſufficit citatio generalis. Gemin. *in c. fin. de electio lib.* 6. ſequitur Felin. *in c. cognoſcentes. colum* 6. *de conſtitut.* vbi multa cumulat ad propoſitum, & ſi illud in ciuilibus, quid in criminalibus? Ex quib. infertur quod dom. Rufineta nimium feſtinanter proceſſerit ad talem executionem.

SVMMARIA.

1. *Iudex non condemnans in acceſſoriis cenſetur ab eis abſoluere, adeo quod peti non poſſunt nouo iudicio.*
2. *Quando intereſſe non debeatur.*
3. *Solitus olim negociari, non præſumitur hodie negociari.*
4. *Vna præſumptio tollit alteram, & fortior debiliorem.*
5. *Semper inſpiciendum eſt quod fieri debet, quod non fit.*
6. *Intereſſe lucri ceſſantis debetur quando eſt quaſi certum & in potentia propinqua.*

CONSILIVM CCCXX.

Pro heredibus nobilis Petri Georgii Gambandi à ciuitate Saluciarum, contra nobilem Thomam Laurentii.

DIVINO ſubſidio ex corde poſtulato. Thomas Laurentii ciuis Saluciarum, obtinuit ſententiam contra nobilem Petrum Georgium Gambandi, per quam fuit condemnatus idem Gambandi ad petita. Petitio autem continebat ſummam florenorum mille & ducentum, cum intereſſe & aliis acceſſoriis. A qua ſententia cum fuiſſet appellatum ad excellentiam Marchionalem, Illuſtr. Marchio ore ſuo ſententiam dixit per quam heredes ipſius Petri Georgii condemnauit ad ſoluendū ſummam prædictam 1200. florenorum condemnando ipſum Thomam Laurentii expenſis vnius inſtantiæ ratione certę nullitatis, imponendo partibus ſilentium perpetuum. Deinde D. Thomas Laurentii adhuc egit contra ipſos heredes ad perſecutionem intereſſe lucri ceſſantis, cum dicatur mercator ſolitus negociari, ad quod intereſſe dicuntur condemnati nō obſtante quod oppoſitum fuerit de exceptione rei iudicatæ. In cauſa autem liquidationis intereſſe dati fuerunt articuli parte heredum ad confutationem intereſſe eo quod ipſe Thomas Laurentii obhæratus adeo eſſet quod negociari nullo modo potuiſſet, qui tamen articuli dicuntur reiecti tanquam impertinentes. Super præmiſſo themate quæritur de trib. Primo an poſt ſententiam Illuſtr. Marchionis condemnari potuerint dicti heredes ad aliquod intereſſe? Secundo an repulſio articulorum iure fieri potuerit? Tertio an probatū dicatur de aliquo intereſſe. ¶ Circa primum puto breuiter concludendum non potuiſſe condemnari partem conuentam ad aliquod intereſſe, quia fuerant conuenti abſoluti ab omni intereſſe & acceſſorio per ſententiam Prin. in qua ſolum fuerunt condemnati ad ſortem principalem, quia † iudex non condemnans in acceſſoriis 1
cenſetur ab eis abſoluere, quæ peti non poſſunt nouo iudicio, vt per Bert. *in verb. iudicis poteſtas. verſ.* 216. *& verſi.* 271. ſed Bertac. dictum videtur dubium, quia arguit ex omiſſione ad factum, & ſic à contrario ſenſu vltra limites ſenſus directi: nam ſenſus directus eſt quod iudex omittens circa intereſſe, ad illud non condemnauit, ſed non ſequitur, ergo abſoluit, & ita in ſententia arguit Corn. *in conſ.* 49. *col.* 2. *lib.* 2. in omni materia quod non ſumatur inſtrumentum à contrario ſenſu vltra limites ſenſus directi, tradit Paul. de Caſt. *in conſ. col.* 6 *incipiendo a ſecundo l.* 2. Dec. *in l.* 1. *in prin. col.* 15. *ff. de offi. eius. in conſ.* 110. *col.* 2. *in conſ.* 116. *col. fi. & conſ.* 183. *col.* 4. nec Doct. allegati per Bertachi. dicunt id ad quod eos allegat. ¶ Sed tamen in caſu noſtro quod pars conuenta cenſeatur abſoluta ab omni intereſſe ex alio videtur probari, ſtante impoſitione perpetui ſilentii de cauſa ipſa præter quā per eum qui ſequitur modum, pondero illam dictionem præterquam, quæ venit exceptiue ad præcedentia, nam primo ponitur ſilentium perpetuum per modū regulæ, poſtea excipiuntur ab impoſitione ſilentii contenta in modo ſequenti: quia dictio præter adiecta his quæ continentur ſub præcedentibus ſtat exceptiue. Bart. & Doct. *in l. actio. C. de tranſactio.* Iaſ. *in l. Titia textores. col. fi. in* 10. *no. ff. de leg.* 1. ſed ſub regula perpetui ſilentii in cauſa omnia cōtinebantur ſors & acceſſoria, ergo cum excipiatur ſors tantum, in aliis remanet firma regula impoſitionis ſilentii, quia exceptio firmat regulam in caſibus non exceptuatis. *l. quæſitum. §. denique.* vbi Bar. *ff. de fundo inſtruct. cum ſimilib.* Itaque non tacite, ſed expreſſe videtur facta abſolutio ab acceſſoriis per talem exceptionem. Modo cum ſententia principis tranſierit in rem iudicatam per expreſſam approbationem partis neſcio quomodo potuerint heredes Petri Georgii condemnari ad aliquod intereſſe.

Ideo talis ſententia condemnatoria intereſſe videtur nulla tanquam euidenter iniqua. *c. inter ceteras.* vbi Doct. *de re iud.* & ibi eſſet aliqua danda reſtitutio minoribus etiam contra ſententiam principis aut præfecti prætorio. *l. in cauſa. §. fi. cum l. ſeq. vſq; ad §. non ſolum. ff. de minor. cap. ſuſcitata de reſtit. in integr.* ¶ In qua re conſiderandum eſt quod ſententia principis non fuit lata in breui cauſæ cognitione, ita quod non fuerit cogitatum de intereſſe, nam habita eſt ratio expenſarū nullitatis inſtantiæ. Ideo autem noluit princeps condemnare ad intereſſe, quia † illud non de- 2
betur ceſſante mora. *l. lecta. ff. ſi certum petatur.* in tantum quod nō valet pactum vt debeatur intereſſe ceſſante mora. Aret. *in conſil.* 141. *Viſo themate col. fi. in* 2. *dubio.* ſed ſi acta videantur Petrus Georgius habuit multas cauſas excuſantes à mora cum non prætenderet ſe teneri ad principale. Iuſta enim dubitatio excuſat à mora. *l. qui ſolutionis ff. de vſur. l. qui fine dolo §. non poteſt videri improbus. ff. de reg. iuris.* Paul. de Caſt. *in conſi.* 88. *Videtur dicendum præfatum Bartholomæum. colum.* 2. *circa med. lib.* 1. & niſi princeps vidiſſet cauſam iuſtam excuſandi à mora veriſimiliter condemnaſſet ad intereſſe. Cauſę etiam iuſtę accuſandi à mora exprimūtur in ſchedulis parte ipſius Petri Georgii productis, & ſubſcriptis per dominos Pelletam & Conſtantium Caroli, in quibus domini aduocati Conſtant. tenebant ipſum Petrum Georgium non teneri ad reſtitutionem pecuniæ niſi diſcuſſo locatore, ſtante clauſula, niſi eſſet aliunde relegatus, appoſita in inſtrumento obligationis ipſius P. Georgii, qui ob id dicebat habendam eſſe diſcuſſionem contra locatricē, quæ prius tenebatur ad reuelandum ipſum Thomam Ianuarii. Conſiderandum eſt etiam quod omne pondus & onus ſatisfaciendi pertinebat ad Illuſtriſſimam dominam locatricem ſeu eius heredes, & quod ipſe Petr. Georgius erat verus creditor, quæ omnia faciunt ceſſare ſuſpicionē doli contra ipſum Petrum Georgium. Circa ſecūdum dubium puto quod articuli non debuerint repelli cum videantur pertinentes, nam licet Thomas Laurentii ſolitus olim fuerit negociari,

ciari, tamen oporteret probari quod negociaretur de tempore aſſertæ moræ Petri Georgii, quia cum debebatur intereſſe lucri ceſſantis ſolito negociari. *l. 3. §. fin.* vbi Paul. de Caſt. *ff. de eo quod certo lo. & c. dilecti. de foro competenti. clem. 1. de vſur.* Bart. & Doct. *in l. vn. Cod. de ſenten. quæ pro eo quod intereſt.* probandum erat quod ſolitus eſſet negociari de tempore aſſertæ commiſſionis moræ, quia qualitas ſolita debet adeſſe tempore verbi. *l. in delictis. §. ſi extraneus. ff. de noxal.* & cum negociatio de facili mutetur, quia non in 3 præſenti: ideo ſolitus olim negociari non præſumitur hodie negociari, vt notatur *ex perſona. & l. ſiue poſſidetis. C. de probatio.* Sed dicet aliquis, quod Thomas Laurentii non mercaretur de tempore aſſertæ moræ, id fuit facto & culpa Petri Georgii non ſoluentis, reſpondeo, quod ante moram non potuit Petrus Georgius dici in culpa *l. edicto. §. cum autem. ff. de iure fiſci. l. ſororem. C. de his quib. vt indign.* quæ duo iura ad hoc citat Bald. *in conſ. 34. Statuto ſeu capitulo. colum. 2. poſt med. li. 5.* ideo ſi Thomas Laurentii deſiit mercari ante moram Petri Georgii, ergo non poteſt prætendere intereſſe quod deſierit negociari culpa moroſi, ſed culpa ipſius Laurentii qui æs alienum maius conflauit quam vt illud poſſet 4 diſſoluere. Secundo † reſpondeo quod vna præſumptio tollit alteram & fortior debiliorem *l. penult. ff. de reſtit. in integ. cum ſimilib.* ſed Thomas Laurentii erat onuſtus mole æris alieni, quod ipſum pars conuenta voluit & vult probare, ideo præſumendū eſt quod deſierit mercari propter æs alienum magnū ad ſcutos 2000. non ob florenos 120. quia illa præſumptio magni æris alieni eſt fortior illa præſumptione, quod deſierit mercari ob non ſolutos ſcutos 150. & iſtud eſt indubitandum ſi ipſe Laurentii deſierat negociari ante commiſſionem aſſertæ moræ. 5 Tertio † reſpondeo, quod ſemper inſpiciendum eſt quod fieri debet, non quid fit *l. licet. ff. de offi. præſi. l. nemo. C. de ſent. & c. cum cauſam. de electio.* mundo de ſuo negociari quis debet, non de alieno *arg. l. ſi quis, in grau. §. ſi cum omnes. ff. ad Syllan. an. l. ſi quis ſeruum. §. ſi inter duos. ff. de leg. 2. auth. licerum hoc. C. de ſecun. nupt. c. ſ. ceterum. de donat. & relatum. ſecundo. de teſtam.* ſed bona intelliguntur deducto ære alieno. *l. ſubſignatum § bona. ff. de verb. ſignif.* Ideo ſi Thomas Laurentii debebat ſcutos 1000. non eſt præſumendum quod ſi recepiſſet ſcutos 150. in eis negociatus fuiſſet. ſed præſumendum eſt potius quod curaſſet ſatisfacere creditoribus in parte ſaltem *arg. l. cum certo. ff. pro ſocio.* vel potius præſumendum eſt, quod creditores ſi vidiſſent merces apud ipſum Laurentii, illas ſequeſtrari & leuari feciſſent, *arg. l. cum de indebit. ff. de probatio.* & quia diligens quilibet præſumitur circa iura ſua *arg. l. ſi defunctus. C. arbitr. tut. l. fin. C. de aliment. pupillo præſtan.* Rota *in conſ. 481. præſentis. col. 2. in fin.* & id ipſum citra aliam probationem compertum habemus ipſo rerum experimento quod vbi debitor onuſtus eſt creditoribus, omnes concurrunt & vigilant ſi quid aſſequi valēt, nec eſt veriſimile quod debens ſcutos 1000. negociari incipiat in ſcutis 150. imo qui tantum debent, quiduis potius quam ſe cogitent negociari, cū cauſa multitudinis creditorum negociantes faciat decoquere. ergo ſoriius ab initio mercandi abſtinere *l. patre furioſo. ff. de his qui ſunt ſui vel alien. iur.* Itaq; articuli dantes materiam multitudinis creditorum erant & ſunt pertinentiſſimi ad probandū, & præſumendum quod copia creditorum in cauſa fuit prætermittē-6 dæ negociationis, non aſſerta mora Pet. Georgii. ¶ Circa † tertium dubium ad hoc vt debeatur intereſſe lucri ceſſantis, non ſufficit, quod quis ſit ſolitus negociari, ſed requiritur quod tale lucrum ſit quaſi certum & in potentia propinqua. Bart. *in d. l. vn. col. 9. vers. quoddam eſt lucrum in quo induſtria. C. de ſent. quæ pro eo quod inter.* Paul. de Caſt. *in d. l. 3. §. fin. ff. de eo quod certo loco.* vbi Iaſ. *colum. penu. in fin.* Dec. *in l. diem functo. in quarto notab. ff. de offi. aſſeſſor. & in conſ. 332. colum. 2. §. fin.* decit. Neapolit. *in deciſ.* 20. in quibus locis volunt Doct. probandum eſſe quod mercator haberet merces præ manibus, quas emere omiſit, quia pecuniam debitā habere nō potuit. Quod hic nō ſolum non videtur probatum, ſed ne quidem deductum. ¶ Nec ſufficeret probare quod Thomas Laurentii ſolitus eſſet conducere bona, quia non omnes cōductores lucrantur, imo ſępius iacturam faciunt, ſed deberet probari, quod tali & tali anno conductores communiter in illis partib. tantum lucrati ſunt. Probadum etiam erat quod habeat talem grangiam præ manibus, quam volebat conducere, ſed non potuit ob defectum pecuniæ ſibi debitæ per Petrum Georgium per ſupradicta. ¶ Iuxta voluminibus proceſſuum & in tempore tam breui factum circa probationem aſſerti intereſſe ad integrum videre non potui, ſed ex præmiſſis datur occaſio ſpeculandi domino Durandi Secretario Marchionali circa facturam plenius inquirendi. ¶ Non omitto quod intereſſe debet debito pleonum probari, ſo tantum quod in eius probatione non admittatur iuramentum ſuppletiuum. Bald. *in d. l. vn. in fin. C. de ſenten. quæ pro eo quod inter.* quod dictum pro ſingulari refert & ſequitur I. *in §. curare. col. ſi. circa med. inſtit. de actio.* Saulliani 14. Octobris 1457. Aymo Crauetta à Saulliano Iuriſconſultus.

SVMMARIA.

1. *Ratio proximitatis depellit ſuſpicionem inceſtus.*
2. *Qui male agit, odit lucem.*
3. *Ex actu inſolito præſumitur dolus.*
4. *Argumentum ab oppoſitis valet.*

CONSILIVM CCCXXI.

Pro Federico de Vgho & Catharina eius ſorore ex loco Caſtiglolsarum Marchionatus Saluciarum, contra procuratorem curiæ eiuſdem loci in materia inceſtus.

DIVINO ſubſidio ex corde poſtulato. Federicus de Vgho & Catharina eius ſoror de Caſtiglolis, marchionatus Saluciarum inquietatur per procuratorem curiæ dicti loci de inceſtu quod ſimul dormierint. ¶ Quæritur, an dicatur probatus inceſtus ex illa dormitione ſimultanea ſaltem quoad torturam requiſitam? ¶ Videtur dicendum prima frōte quod ſic, per text. *in c. literis. de præſumptio. in c. præterea. de teſtib. in c. nec aliqua. 27. qu. 1.* vbi quod copula carnalis probatur ex eo quod aliqui ſimul iacuerunt in eodem lecto, & paria videntur dicere, iacuit vir cum tali muliere, ac ſi dicatur eam carnaliter cognouit. *gloſ. 1. in l. Cum Caſu. ff. de fideicomm lib.* quam glo. ad hoc citat Bald. *in c. 1. col. 6. quib. modis feud. amittat.* Alex. *in conſ. 77. colu. 2. lib. 7.* & quod ex dormitione aut iacentia ſimultanea probatur copula carnalis tradit Pau. de Caſt. *in conſ. 45. licet per ſupraſcriptum examinum. colum. ſi. lib. 1.* vbi Paul. citat illud Ouidii, à iuuene & cupido credatur cognita virgo. not. Alex. & Doct. *in l. 1. ff. ſi cert. pet.* Nec videntur excuſari rei ſub obtentu coniunctionis ſanguinis, quia tex. *in d. c. literis. de præſumptio.* loquitur in conſanguineis, & tamen arguit inceſtum contra eos, & ita illum tex. contra eos citat dominus aduocatus fiſci. ¶ Sed præmiſſis non obſtantibus contrariū puto de iure verius, quod imo non dicatur probatus inceſtus cōtra reos vere nec pręſumptiue etiam quoad torturam, per text. *in l. eum qui probabilem. C. de epiſc. & cler. & in l. ſi his qui. C. de adulter.* in 1 quibus iuribus probatur, † quod ratio proximitatis & coniunctionis ſanguinis depellit, aut purgat ſuſpicionem inceſtus. & text. *in dict. leg. eum qui probabilem.* loquitur in clerico tenente intra ſepta domus ſuæ matrem, filias ſuſceptas ante clericatū, & ſorores ſeu germanas. In his enim dicit text. nihil ſæui criminis exiſtimari fœdus naturale permittit: illa iura loquuntur generaliter nec excipiunt cauſam dormitionis ſimultaneæ, ergo generaliter videntur intelligenda. *vulg. l. de pretio. ff. de public.* Rurſus ratio illorum iurium eſt generalis, licet mater dormiat cum filio, pater cum filia, frater cum ſorore, tamen fœdus naturale non permittit aliquid ſæui criminis inter eos conſiderari, itaq; ex ratione generali videtur extendenda lex ad omnem caſum, in quo militat ipſa ratio. *l. altio. ff. de calumniat. l. regul. §. & licet.* vbi Bart. & Bal. *ff. de iuris & facti ignorantia. l. cum pater. § dulciſſimis. ff. de leg. 2. l. nomen debitoris. §. fin. ff. de leg. 3.* Bart. *in l. pater filium. §. fundus in fin. ff. de leg. 3.* Bald. *l. voluntas. C. de fideicomm.* imo ratio generalis facit dictum extendi ad caſum ad quem alias non adaptantur verba etiam in materia diſtricta. gl. & Ant. *in clem. 1. de elect.* Cornel. *in conſ. 273. col. 2. in fin. lib. 4.* addo Gemin. *in conſ. 39. col. 1.* vbi quod lex ſtrictius loquatur in parte diſpoſitiua. *per glo. in d. clem. 1. de elect. & alias glo. per eum citatas.* ¶ Quod ipſum procedit etiam in materia exorbitanti. Gemin. *in conſ. 40. col. 2. poſt prim.* ideo videmus quod ſtatutum, ſiue correctorium, ſiue exorbitans extenditur, & ampliatur ad omnes caſus qui ſub ratione expreſſa comprehendi poſſunt. Bald. & Moder. *in auth. quas actiones. in 3. quæſt. C. de ſacroſan. eccleſ.* Curt. ſen. *in conſ. 81. recte. col. 4. ante med. verſ. & in propoſito noſtro.* & hoc videmus ipſa rerum experientia. nam ſæpius videmus patrem iacere cum filiab. matrem cum filiis, fratres cum ſororibus, imo & cognatos cum cognatis citra omnē ſuſpicionem mali. ¶ Tota difficultas conſiſtit in reſpondendo ad contraria quibus ſublatis clariſſima erit res, itaq; non obſtat tex. *in d. c. literis. de præſumpt.* vel quod arguitur copula ex iacentia ſimultanea in eodem lecto etiam inter cōſanguineos. Quia reſpondendo

multus

multis modis, & primo quod ille tex. loquitur in cõſanguineis, nos autem in fratre & ſorore, in quibus fratre & ſorore non militat tanta ſuſpicio quanta in conſanguineis remotioribus: ideo arguere de conſanguineis ad fratrem & ſororẽ videtur arguere à caſibus diuer . . . abentib. rationem diuerſam quod non permittitur, quia ex . eparatis non infertur. *l. fin. ff. de calumniat. l. Papinianus exuls. ff. de minori.* ¶ Secundo reſpondeo, quod text. *in d. c. litera.* loquitur quando conſanguineus viſus eſt iacuiſſe cum conſanguinea occulte & clandeſtine: ibi, multis locis ſecretis & latebris ad hoc commodis, ex qua clandeſtine arguitur con-
2 tra eos. *l. ſi. ff. de ritu nupt. l. 1. C. de interdict. matrim.* & † qui male agit, odit lucem. *c. conſuluit. de offi. deleg. c. Anaſtaſius. 20. diſt.* nos autem loquimur in fratre & ſorore palam ſimul dormientibus, ex qua dormitione manifeſta, ceſſare videtur omnis mala ſuſpicio. *l. non exiſtimo. ff. de admin. tut.* Ideo ſi profeſſus erit palam ordinem, & palam ducit vxorem, præſumitur per errorem id facere non per dolum, ideo inquiſitor fidei non poteſt contra eum procedere. Iaco. Butr. *in l. 2. C. de ſum. Trin. & fide Cathol.* ſequitur Abb. *in conſ. 68. col. 2. lib. 1.* ſimiliter ſi quis contrahit matrimoniũ prohibitum, vt quia inter coniunctos, palam præſumitur per errorem id facere. *d. l. ſi. ff. de ritu nupt. l. ſi adulterium cum inceſtu. §. 1. ff. de adul.* ſimiliter qñdo datur pecunia teſti palam vt verum dicat, non præſumitur in eo falſitas neq; corruptio. Bal. *in c. fi. de appell.* Dec. *in conſ. 189. col. 7. poſt med. verſ. item dicitur* ¶ Tertio reſpondeo, quod text. *in d. c. litera.* non loquitur in coniunctis ſimul habitãtibus, quo caſu quando ſimul deprehenduntur occulte iacere
3 præſumitur contra eos, quia actum in ſolidum faciũt. ¶ Et † ex actu inſolito præſumitur dolus. gl. & Bart. *in l. ſi quis ſub conditione. ff. de condit. inſt.* nos autem loquimur in fratre & ſorore ſolitis habitare ſimul, ideo non valet argumentum de inſolito ad ſolitũ, quia eſſet arguere ex diuerſis in facto & ratione. ¶ Quarto reſpondeo iſti rei iacuerunt ſimul per biennium vt dicitur, & tamen ſoror nunquam inuenta eſt grauida cum publice ſemper fuerit conſeruata in loco Caſtiglioliarũ. Plane videtur pluſquam veriſimile quod ſi carnaliter commixti eſſent in tanto tempore conceptum partum habuiſſet, cum alias ex ſemine alterius procreauerit. In qua ipſa re bonum videtur argumentum à communiter accidentibus *gl. in l. neq; natales. C. de probat.* Mõder. *in c. in præſentia. de probation.* quod procedit etiam vbi agitur de crimine ciuiliter. Abb. *in conſ. 113. col. 3. lib. 2.* ¶ Quanto fortius procedit tale arg. à communiter accidentibus in caſu noſtro. vbi agitur de abſolutione criminis. *reg. fauorabiliores. ff. de reg. iuris.* ¶ Quinto reſpondeo, quod iſte Federicus de Vgho frater dicitur valetudinarius, & quodammodo frigidæ naturæ ex aſpectu, ideo non militat in eo ſuſpicio Ouidiana, de qua ſupra, à iuuene & cupido credatur cognita virgo, valet † enim arg. ab oppoſitis,
4 quia contrariorum eadem eſt diſciplina. *l. 1. ff. de his qui ſunt ſui vel alien. iur. cum ſimilib.* Itaq; ſicut in ludis Veneris ſuſpicio eſt contra iuuenem fortem & cupidum, ita per contrariũ præſumptio eſt pro homine imbecilli valetudinario & inclinatæ iam ætatis. ¶ Sexto pro reſponſione adduco quod ſcribit Anch. *in conſ. 109. Facit dubium.* Vbi licet vxor traducta ad domum mariti & quæ cum eo cohabitauit præſumatur ab eo cognita carnaliter per iura ſupra allegata, in fauorem fiſci, tamen contra talem præſumptionem admittuntur aliæ præſumptiones in contrarium & inter alias conſiderat quando vir & mulier negant ſe commixtos carnaliter, & quando mulier ex breui tempore aufugit à viro & religionem ingreſſa eſt, ſed in caſu noſtro plures concurrunt præſumptiones de quib. ſupra, ſanguinis proxima coniunctio, cohabitatio & ſimultanea dormitio in manifeſto, fratris conditio ad Venerem minime procliuis, ſororis venter minime tumidus in tanto tempore. ¶ Ex præmiſſis cõcludo quod reis inquiſitis ſtultitia aut error imputari poteſt potius quã dolus, & quod eis interdici debet talis ſimultanea cohabitatio ratione vitandi ſcandali potius quam vt ex ea pœnam aliquam ſuſtineat. ¶ Non omitto quod ex alio inquietari non debent, quia poſt confeſſionem ſimultaneæ dormitionis relaxati fuerunt mediãte cautione ſolita, quæ ordinatio relaxationis tranſiuit in rem iudicatã & approbata fuit à fiſco, ergo fruſtra nunc quæritur de tortura, quia ſi torturæ locus fuiſſet, non ad eum modum ordinatum fuiſſet, nec dicatur ſuperueniſſe indicia de nouo, quia ex eiſdem tantũ indiciis inſtat fiſcus, itaq; competit reis exceptio rei iudicatæ, quæ exceptio etiam in cauſa criminali tenet: ideo abſolutus in iudicio inquiſitionis, non poteſt amplius moleſtari per viam accuſationis, etiam ſi intentatur noua qualitas delicti, niſi probetur colluſio in cauſa inquiſitionis, vel niſi offenſiue accuſatus ignoraret cauſam ipſam inquiſitionis. Bald. *in conſ. 192. & 1. lib. 3. & in conſ. 430. formata fuit. lib. 5.* Et quod abſolutus in iudicio inquiſitionis opponat exceptionem rei iudicatæ agenti ad idem crimẽ per viam accuſationis, tradit Rota *deciſ. 510. Nota, quod tenens in antiquis.* In propoſito noſtro ſatis videntur abſoluti rei à iudicio torturæ, niſi allegat iudex turpitudinem ſententiæ ſuæ, ergo de tortura amplius quæri non debet non accedentibus nouis indiciis. Saulliani 12. Decembris 1547. Aymo Crauetta ex Saviliano. I. V. D.

SVMMARIA.

1 *Quando in poſſeſſorio beneficii eccleſiaſtici ſufficiat titulus coloratus.*
2 *Ius patronatus probatur per ſolam famam in antiquis.*
3 *In quo ca . . privilegium extinctum reuiuiſcere non poteſt.*
4 *Vbi poſſeſſio peruenit ad aliquem ſine vitio & inconſtẽ quis ſpoliatus non fuit, non debet ſpoliatus reſtitui.*
5 *Vltima poſſeſſio aliquando conſideratur.*

CONSILIVM CCCXXII.

Pro magnificis dominis Valfeneriæ marchionatus Saluciarum, contra Reuerendam dominam Abbatiſſam monaſterii S. Anaſtaſii.

DIVINO ſubſidio ex corde poſtulato. Domina Abbatiſſa monaſterii S. Anaſtaſii diœceſis Aſtenſis prætendit habere ius cõferendi beneficium eccleſiæ S. Ioannis Baptiſtæ diœceſis Valfeneriæ marchionatus Saluciarum virtute cuiuſdam priuilegii antiquiſſimi à ſummo Pontifice conceſſi. Per contrarium magnifici domini Valfeneriæ contendunt eccleſiam memoratam eſſe de iure patronatus ipſorum dominorũ, quod ipſum probant ex antiquis matrimoniis ſuper ipſo iure patronatus examinatis, ex quibus apparet de præſentationib. factis per ipſos dominos. Rurſus per inſtru. antiqua in quib. fit mentio de ipſo iure patronatus. Domina autem Abbatiſſa ſolum probat de vnica collatione illius eccleſiæ. ¶ Nunc agitur iudicium inter dominum Gaſparum de Ponziglontibus tanquam præſentatum à monaſterio prædicto, & dominum Io. Georgium Iſnardi tanquam præſentatum interuenientibus ipſis dominis Valfeneriæ pro tuitione dicti eorum iuris patronatus, & latæ dicuntur quædam ſententiæ ſuper poſſeſſorio in fauorem memoratę d. Abbatiſſæ. In ea ipſa cauſa datæ fuerunt poſitiones in quibus deducitur ipſum ius patron. dominorum Valfeneriæ & poſſeſſorium ſeu quaſi præſentandi per tempus antiquiſſimum, & etiam deducitur quod in vltima vocatione dicti beneficii per mortẽ R. domini Vaſſini Malabaliæ Epiſcopi Albenſis, & Diui Rectoris dictæ Eccleſiæ præſentatus fuit dominus Ioannes ſecundus Iſnardi per ipſos patronos, qui dominus Ioan. ſecundus præſentatus inſtitutus per ordinarium & ipſum beneficium poſſedit: deinde illud renunciauit memorato domino Ioan. Georgio Iſnardi eius fratri de conſenſu patronorum, qui ipſum dominum Ioan. Georgium præſentauerunt, ex qua præſentatiõe inſtitutus fuit per ordinarium, & qui ipſum beneficium poſſedit pacifice donec domini Valfeneriæ expulſi fuerunt ab ipſo loco titulo belli, & opponitur in ipſis poſitionibus contra partem regula cancellariæ de triennali poſſeſſore pacifico. Deducitur etiam ipſis poſitionibus quod poſt erectionem epiſcopatus & ciuitatis Saluciarum collatio omnium beneficiorum marchionatus conceſſa eſt ordinario aut epiſcopo ipſius ciuitatis, ob id quod ex eo ſolum fundata videtur intentio ipſius domini Ioann. Georgij. Tandem poſitiones prædictæ repulſæ fuerunt per ſententiam magnifici dom. Conſtantij Caroli iudicis appellationum Excellentiæ marchionalis. ¶ Quæritur nunc de iuſtitia aut iniuſtitia dictæ repulſionis. ¶ Videretur dicẽdum prima fronte tales poſitiones recte fuiſſe repulſas: nam agitur cauſa poſſeſſoria ſuper beneficio eccleſiaſtico coram iudice laico. In quo poſſeſſorio admittendæ non videntur poſitiones eiuſmodi tanquam pertinẽtes ad merum petitorium. *l. ſi de vi. ff. de iud. l. ordinarii. C. de rei vendica. l. ſi quis ad ſe fundum. C. ad l. Iuliam de vi. l. ſecundum colon.* vbi Bart. *C. de agric. & cenſi. lib. 11. c. ex conqueſtione. de reſtit. ſpol.* ¶ Quod ipſum videtur procedere licet probatio petitorio in continenti offeratur. glo. & Doct. *in d. l. de vi. nor. in l. 1. C. de edicto diui Adriã. toll. & in c. 1. de reſtit. ſpol.* Paul. de Caſtro *in conſilio 213. Viſo puncto ſupraſcripto. in princip. libro 2.* Dec. *in conſilio 57. col. fin. & in conſ. 84. col. . ante med.* & videntur permiſſa procedere etiã vbi agitur poſſeſſorio ſuper beneficio eccleſiaſtico in quo videtur ſufficere probatio tit. colorati. Guid. Pap. *quæſt. 85.* ſequitur

itur Dec. *in l. ſi. col. 5. in nono no. C. de edi. diui Adria. toll. & in conſ. 22.* 2. ſed domina Abbatiſſa oſtend[illegible] tit. plus quam coloratum, [illegible] eſt priuilegium conceſſum á ſummo Pontifice, ita quod cum [illegible]ſtendat de titul[illegible] & poſſ[illegible]ſſione, res clara videtur in fauorem [illegible]ſius dominæ Abbatiſſæ, maxime ſtantibus tot ſententiis in [illegible]us fauorem pronu[illegible]tiis. ¶ Sed præmiſſis non obſtantibus, [illegible]æ vere obſtare non videntur, contrarium puto de iure verius, [illegible]od imo poſitione[illegible] [illegible]orum Valſenetæ admitti debeát, [illegible] fundamento conſidero quod domina Abbatiſſa habet [illegible]mptionem iuris communis contra ſe. quia de iure colla[illegible]neficiorum pertinet ad ordinarium. *c. cum ex iniuncto. in fin.* [illegible] *omnino. 16. q. 6.* Feder. de Senis *in conſ. 134. Super primo* [illegible] *col.* [illegible] *fin. Domini. in c. 1 collatione. in prin. de appell. libr. 6.* Dec. *in* [illegible] *c. colu. 1. in pn.* nec competit Abbatiſſæ ius conferendi beneficia niſi in eccleſiis ſuorum monaſteriorum gl. & Doct. *in* [illegible] *maior. & obed.* hoc præſuppoſito dico quod agenti [illegible] petit[illegible]orio eo caſu quo præſumptio iuris eſt contra poſſidentem obſtat exceptio defectus tit. *cap. conſtitutus de filiis preſbyt. c. ſi ad decimas. de reſtit. ſpol. lib.* [illegible]. Rota *deciſ. 399. Si conſeratur. colu.* [illegible] *in nouis.* Arch. *in conſ. 310. Tres domini. magnifici. columm. 3. poſt me. verſi. hic præmiſſis. & colum. fin. poſt med.* bellamet. *in conſ. 3. colum. 5. in 3. dubio.* Ergo admitti debebant poſitiones reorum tendent[illegible] ad inualiditatem & ſubuerſionem tituli partis aduerſæ habentis contra ſe præſumptionem iuris. ¶ Secundo conſidero quod in poſſeſſo-
1 rio beneficii eccleſiaſtici non † videtur ſufficere titulus coloratus quando præſumptio iuris eſt contra agentem, quod ipſum probatur, nam in poſſeſſorio beneficii eccleſiaſtici regulariter eſt neceſſarius titulus coloratus, licet præſumptio iuris non ſit contra agentem, quia beneficia eccleſiaſtica ſine canonica inſtitutione obtinere non poſſunt. *c. 1. de reg. iur. li. 6.* ideo dicit Old. *in conſ. 1. colu. 1. poſt med.* ſpoliatus beneficio debet aliqualiter probare titul. iuſtum & legitimæ poſſeſſionis. *per reg. d. capit. primi. de reg. iuris. lib. 6.* & quod in poſſeſſorio beneficii regulariter ſit neceſſaria probatio tituli colorati tradit Guido Papæ *quæſt. 85.* ſequitur Dec. *in l. fin. colum. 5. in nono notab. C. de edicto diui Adria. tollen. & in conſ. 220. colum. 2.* itaque dum Doct. conſtituunt differentiam circa probationem tituli inter poſſeſſorium non habens præſumptionem iuris contra ſe, & illud poſſeſſorium contra quod iuris præſumptio eſt, neceſſarium eſt dicere quod in poſſeſſorio habente præſumptionem iuris contra ſe neceſſaria ſit probatio veri & legitimi tituli, nec ſufficiat titulus coloratus, quia alias nihil ſpeciale eſſet in poſſeſſorio eiuſmodi, cũ requiratur titulus coloratus regulariter in quolibet poſſeſſorio. Et qua ratione in tali poſſeſſorio habente præſumptionem iuris contra ſe requiritur probatio veri tituli, eadem admitti debet impugnatio & oppoſitio contra titulum productum quia non dicitur verus titulus qui impugnari poteſt, ſicut traditum non dicitur quod reuocari poteſt *l. ſi pars. §. fin. ff. de inoff. teſtam. l. ſi ratio. pri. vbi gl. ff. de ac*[illegible] *empt. l. non quocumq. in pr. ff. de leg. 1. l. fideicommiſſa. §. ſi quis illo. tit.* vbi Bal. *ff. de leg. 3.* ſimiliter paria ſunt non habere titulum vel exceptione illum elidi poſſe. *l. eleganter. §. ſerum ff. de dolo.* itaque admittendæ erant poſitiones reorum ex quib. titulus partis omnino reddebatur inualidus. ¶ Tertio, poſito & non conceſſo, eſſemus in alio poſſeſſorio in quo probatio non eſſet neceſſaria tituli neque colorati, adhuc pars aduerſa obtinere non debebat, ſed admittendæ erant poſitiones reorum appellantium, quia aſſertum priuilegium conferendi á parte productum, eſt antiq[illegible]iuum, poſt cuius conceſſionem vocationes eccleſiæ plu[illegible] [illegible]xac[illegible]lerunt, & tamen domina Abbatiſſa non docuit niſi de v[illegible] collatione facta per monaſterium & illa ipſa ſatis recenti. Per contrarium domini Valſenetæ produxerunt teſtimonia antiquiora illa collatione & alia inſtrumenta antiqua, in quib. probatur ipſam eccleſiam eſſe de iure patronatus ipſo-
2 rum dominorum: nam † probatur ius patronatus per ſolam famam in antiquis. Bald. *in l. cum ſuper. C. de rei vend.* Dec. *in conſ. 117. in fin. & in conſ. 126. colum. 2. circa medium.* fama autem probari dicitur ex pluribus ſcripturis aut inſtr[illegible]entis de antiquo in quibus ſit mentio de ipſo iure patronatus, quia plura inſtrumenta antiqua habent vim probationis famæ. Bald. Salic. & Paul. de Caſt. *in l. cum aliquis. C. de iure delib.* Suett. *in conſ. 89. In cauſa agitata inter* [illegible] *colum. 3. verſ. præterea iſta concluſio. lib. 1. & in conſ. 194. colum. pen. verſi. ſed ad primum reſpondetur. lib.* [illegible] *& dixi in conſ. 54. colum. 3. ante med. & latius in tractatu meo. de antiquitate temporis* inſtrumenta autem de antiquo producta ſunt, [illegible]ſt, acquiſitionis caſtri Valſenetæ in quibus expreſſe fit mentio [illegible]e iure patronatus per verba diſpo-

ſitiua licet ſufficerent in tam antiquis verba [illegible] betur *in d. l. cum aliquis. C. de iure deliber.* ſimiliter p[illegible] atteſtationes tam antiquæ expreſſe receptæ ſu[illegible] tus. Ex quibus actis & inſtrumentis euident[illegible] vſu aſſerti priuilegii ad conferendum ex aduer[illegible] de contrario vſu contra tenorem ipſius priui[illegible] dum non erat de aſſerto priuilegio quod v[illegible] gl. & Bald. *in l. rem non nouam. Cod. de iudi.* gl. & Doct[illegible] *pace.* & Bald. *in l. fin. §. ſed cum antiquitas. in fin. C. de cura* [illegible] *egregium. in §. fin. ibi, quoniam non vtendo neglecta eſt. in auth. quibus mod. natu. eff. ſui.* imo perditur priuilegium ex non vſu per[illegible]ium quando euenit caſus quoquis vti poterat durant[illegible] *l. 1. vbi gl. ff. de vendi.* gl. & Doct. *in l. ſi.* [illegible] *C. de diuerſ. reſcript.* Iaſ. *in l.* [illegible] *colum. 10. ff. de conſtit. prin.* & alibi ſæpe Doct. ſed hi[illegible] pluimæ [illegible] ciderunt vocationes quib. beneficium, de quo agitur [illegible] poterat, & tamen collatum nunquam fuit per ipſum mon[illegible]tium S. Anaſtaſii, imo collatum fuit per ordinarium p[illegible] inſtitutionis ad præſentationem patronorum ex q[illegible] tum eſt de iure patronatus. ¶ Nec di[illegible]atur recepti[illegible] dictum priuilegium per collationem factam do[illegible] V[illegible] vt ſupra dictum eſt, illa collatio eſt ſatis recens, [illegible] aſſertum priuilegium perditum erat ex non vſu & [illegible]
3 ctarum, ideo † ex collatione ſuperuenienti priuile[illegible] tinctum reuiuiſcere non potuit. *l. quæro. §. aream ff. de ſolutio.* S[illegible] etiam pignus ſemel extinctum amplius reuiuiſcere non[illegible] *l. cum ex cauſa. in fin. C. de remiſ. pign.* ¶ Sic etiam præſcriptione [illegible] interrupta, noua præſcriptione opus eſt, nec tempu[illegible] dens ante interruptionem coniungitur cum tempore [illegible] poſt interruptionem. *l. naturaliter. & l. Pomponius. §* [illegible] *de acquir. poſſeſſ.* ¶ Rurſus, non obſtat aſſerta collatio facta poſt [illegible]miſſum priuilegium, quia ea non obſtante idem dominus V[illegible]ſinus non obtinuit confirmationem aut aliam prouiſionem á ſummo Pontifice dubitans de viribus ipſius collationis, ob id dici non poteſt quod tenuerit beneficium virtute ipſius collationis, ex qua noua prouiſione ſummi Pontificis fundamentum fieri non poteſt ſuper tali collatione. nam cum collatio eſſet inualida poſt perditum ius priuilegii & obtinuerit dominus Vaſinus aliam prouiſionem á Pontifice, præſumitur tenuiſſe beneficium ex prouiſione valida, non ex collatione inualida. *l. miles qui deſtinauerat. ff. de teſtamen. milit.* Paul. de Caſt. *in conſ. 144. Dubium videtur facere. in fin. lib. 1.* ſed magis in terminis adduco Bald. *in conſ. 34. In cauſa iſta colliguntur plura. colum. 2. libro 2.* vbi quod non præſumitur quis poſſediſſe ex titulo præcedenti inualid[illegible]. ad idem adduco Alex. *in conſilio 8. columm. 4. verſi. nec etiam probatur agitur. libro tertio.* vbi quando ex duplici iure poſſidere quis [illegible]tuit. præſumitur poſſediſſe ex titulo magis efficaci. ſed titulus habitus á Pontifice ſine dubio erat efficacior ſtante [illegible]ta[illegible]te collationis Abbatiſſæ, ergo, &c. ¶ Præterea reſpondeo ad aſſertam collationem, quod illud ſaltem negari non poteſt quin dubitatum fuerit de eius viribus obtinendo aliam prouiſionem á ſummo Pontifice, ergo ex tali collatione dubia iuuari pars non poteſt, quia dubia probatio non releuat. *c. in præſentia. de prob.* hinc dicitur quod dubitans & ignorans æquip[illegible]antur. *l. fin. C. de condictio. indebiti. l. fin. §. ſin autem dubius. C. de furtis.* ¶ H[illegible] ta p[illegible] quod notorie appareat de iure patronatu dominorũ Valſenetæ & de inualiditate aſſerti priuilegii ex n[illegible] vſu illius, imo & per contrarium vſum, dico quod admittendæ erant poſitiones & exceptiones reorum per quas notorie apparebat de non iure ipſius dominæ Abbatiſſæ, quia tale[illegible] exceptiones admittuntur etiam contra ſpoliatum. *d. cap. ad decimas de reſtit. ſpol.* [illegible] *c. conſtitutus. de filiis presbyt. non ſimil.* vt p[illegible] Alex. *in l. naturaliter. § nihil commune. columna 16. in decima fallentia. ff. de acqu. p*[illegible] *ſſ.* Socinus *in conſilio 87. columm. fin. libro 3.* Decius *in conſilio* [illegible] *colum. 4. in fin.* in quibus locis dicunt Socin. & De[illegible] notorie[illegible] [illegible]ate de non iure agentis poſſeſſorio ex actis aut inſtrum[illegible] & de inſtrumentis loquitur Socin. *in d. conſilio 80. colum. fin.* [illegible] producuntur acta atteſtationum, ſimi[illegible]ter adducuntur inſtrumenta plura, & ipſa valde antiqua, in quibus fit mentio de [illegible] patronatus per verba diſpoſitiua cum[illegible] la enunciatiua ſufficient, vt ſupra dictum eſt. ¶ Quarto principaliter con[illegible] fauorem dominorum Valſenetæ & rectoris ab eis præſe[illegible] quod vbi † poſſeſſi[illegible] peruenit ad aliquem ſine vitio [illegible] quis ſpoliatus non fuit, [illegible] debet ſpoliatus reſtitui. S[illegible] *conſilio 87. colu. m. pri. poſt me. l. ver* [illegible] *3. & vlt. libro 3. argumento l.* [illegible] *commoda.* ſed hic poſſeſſio ecc[illegible]æ peruenit ad domi[illegible] [illegible]

Ce-

Georgii Rectorem ſine titulo, quia ex cauſa reſignationis, præſentationis, & inſtitutionis ſimiliter dici non poteſt aduerſarius iniuſte ſpoliatus cum probetur eccleſia de iure patronatus dominorum Valſenenæ, nec pertineat eius collatio ad ipſam dominam Abbatiſſam, vt ſupra ſæpe dictum eſt, ergo, &c.

¶ Quinto conſidero, quod dominus Ioan. ſecundus Iſnardi adeptus eſt poſſeſſionem beneficii, de quo agitur, de tẽpore quo valebat: ſimiliter dominus Ioan. Georgius Iſnardi eius frater accepit poſſeſſionem ipſius eccleſiæ tempore quo valebat per reſignationem ipſius dom. Ioa. ſecundi, ſed vbi apprehenditur poſſeſſio rei vacantis, & à nemine poſſeſſæ ceſſat interdictum recuperandæ poſſeſſionis, & ſi agat quis tanquam ſpoliatus, obſtat exceptio dominii *glo. in l. ſi. in verſ. ignorantia. C. vnde vi. Barr. in d. l. ſi de vi. & de vi. Ang. in d. l. 2. C. de edicto diui Adri. toll.* Dec. *in d. conſ. 191. col. 4. circa fi.* ¶ Et conſidero circa præmiſſa fundaméta, quod ſi ſubſtat exceptio concernens petitorium in poſſeſſorio rei tẽporalis, multo fortius vbi agitur poſſeſſorio pro beneficio eccleſiaſtico, in quo ſemper eſt neceſſaria probatio tituli ſaltem colorati. ¶ Sexto principaliter conſidero quod agenti poſſeſſorio ad beneficium eccleſiaſticum obſtat exceptio incapacitatis, puta, quod eſt laicus, quia ſpiritualia poſſidere non poteſt. *c. cauſam de præſcriptis.* Bal. & Alex. *in d. l. naturaliter. § nihil commune. ff. de acq. poſſ.* vbi nouiſſime Rip. *col. 13. in 11 fallen.* & ratio iſtius eſt, quia iſti caſu non dicitur opponi contra poſſeſſorium, ſed negatur ipſum poſſeſſorium & concluditur agentem non poſſidere, ſi enim laicus ſpiritualia poſſidere non poteſt, ergo in laico poſſeſſio non conſideratur, conſequenter fruſtra tractatur de reſtitutione poſſeſſionis, quæ non eſt, quia non entis nullæ ſunt qualitates. *l. 3. ff. de vſufruct. cum ſimil.* Ideo videmus quod agenti poſſeſſorio ad reſtitutionem vxoris opponi poteſt exceptio quod eſt monachus aut ſacerdos, qui vxorem habere non poteſt, & ſic per quam exceptionem concluditur agentem non poſſidere. ita Abb. *in c. ex parte. col. in fin. de reſtit. ſpol.* ¶ Ideo agens ad beneficium eccleſiaſticum prius omnibus debet legitime ſe & perſonam ſuam, & probare ſe eſſe clericum & capacem beneficii. *c. cum literas de tranſact. c. 2. de inſtit. cap. fin. de praben. lib. 6. clem. 1. vt benefi. de æta. & qualit. c. ſi quis epiſcopus. & 1. Salvator. 1. quæſt. 3.* Anch. *in clem. per literas de prab.* Ant. de Butr. *in c. nonnoſtra col. 5. qu. 2. de reſcrip.* Simile videmus quando monachus agit poſſeſſorium, vt reſtituatur ad clauſtrum tanquam iniuſte, vt conſequatur alimenta, quod tenetur probare de titulo monachi, id eſt, ſe eſſe monachum illius monaſterii. Feli. *in c. cum dilecta. de reſcrip.* ſequitur Aufrer. *in decſ. 7 Tholoſ. qu. 491.* Quod ipſum adeo procedit, vt non ſufficiat probare quaſi poſſeſſionẽ clericatus quod quis ſit habitus & reputatus pro clerico, ſed ipſum ordinationem ad clericatũ probare oportet. Gem. *in conſ. 11.* talis enim poſſeſſio ſeu quaſi clericatus non ſufficit ad obtinendum beneficium eccleſiaſticum, ſed ſolum quoad fori priuilegium Ioan. Andr. Bald. *in c. dudum. de elect.* Quod procedit, niſi quis fuiſſet in poſſeſſione clericatus & ẽ beneficii per longum tempus. Hoſti. Ant. de Butr. Abb. & Dec. *in c. illud de præſumptio.* Bal. *in l. ſiue poſſidetis in 4 oppoſ. C. de proba.* Dec. *in 4. colum. 6. in fin. verſ. finaliter tamen de fide inſtrum. & in conſ. 118.* ſed aduerſarius nihil prorſus probauit de clericatu, neq; vere, neq; præſumptiue, quia non deduxit aliquam poſſeſſionem clericatus quod incedat in habitu & tonſura clericali, & quod ſit habitus & reputatus pro clerico, tamẽtſi talis & ſola poſſeſſio clericatus non ſufficeret in actore ad petendum & obtinendũ beneficium quicquid aliter ſit in reo ad illud teſtificandum. Ruta *decſ. 312. Nota quod clericatus. & decſ. 445. Nota quod non præſumitur. in antiquis* ¶ Adeo etiam eſt neceſſaria probatio clericatus ad validitatem collationis quod non ſufficeret deputatio ad clericatũ cũ ineſſet in habitu & tonſura. Feder. de Senis *in conſ. 290. Quia in præſenti. col. 4. poſt prin.* Similiter non ſufficeret clericatum ſupervenire poſt collationem beneficii, quia vbi agitur de validitate actus inſpicitur initium actus. Feder. *in d. conſ. 290. col. 5. in prin.* Nec ideo minus neceſſaria eſt probatio clericatus quod Papa cõferens beneficium dicat ſe conferre tali vt clerico, quia non ſufficit nominatio pontificis niſi aliter probetur clericatus. Ioann. Andr. *in reg. non licet alteri de reg. iuri. lib. 6.* quod dictum Io. Andr. refert Boerius *in decſ. Burde. 2. qu. 171. colum. 2. poſt med.* ¶ In ſuper conſidero quod circa qualitatem clericatus non videtur neceſſaria, poſitio, quia collatio facta laico dicitur nulla ipſo iure propter incapacitatem, vt ſupra dictum eſt, ſed in his quæ ipſo iure ſunt incapacitate inducuntur, neceſſaria non dicitur partis oppoſitio, quia latis ius opponit. *glo. in l. cum quis. & qui. tã.* vbi Imol. *ff.*

de verb. oblig. Bart. & Doct. *in l. ſi vnus. § pactus ne peteret. colu 9. & 10. ff de pactis.* Bart. in *l. lecta ff. ſi cert. pet.* Dec. *in l. 1. colum 2. in prin. C. de pact.* Iaſ. in *§. bonæ fidei colum. 1. & colum. 7. in fin. inſtit. de act.* ſed tamen ad cautelam abundantem fuit oppoſitum in ſchedula incipiente, Pronunciatum, in qua dictum eſt, circa ſin. quod non ponitur pronunciari in fauorem dom. Ioan. Gaſparis de Ponziglonibus ſtantibus actis prout ſtant. Quod ideo dictum eſt, quia intentio ipſius de Ponziglonibus fundata non erat ſine probatione clericatus, & clarius oppoſitũ nouiſſime fuit in ſchedula incipiente, ſic ei appatentes, &c. Ex quo vnico fundamento deficientis clericatus res videtur clariſſima. ¶ Et ſi dicatur etiam dom. Ioan. Georgius Iſnardi non docet de clericatu, reſpõdeo, quod ipſe poſſidet beneficium, & eſt reus originaliter, ideo nihil habet neceſſe probare cum actor non probauerit de iure ſuo. *l. qui accuſare. C. de edendo.* quæ regula procedit etiam in cauſa beneficiali, vt ibi per Dec. *colum. 2. in tertia ampliatione.* tradit Old. *in conſ. colum. 2. verſ. vnde & ſic cum meus. in con. l. 11.* Cacta. *colum. 2. verſ. cum ergo dominum & in conſ. 312. Thema quæſtionis eſt tale colum 1. & ad fin conſ.* Rota *decſ. 15. Si in cauſa dict. 60. Remm in nouis decſ. 70. no. quod vbi conſtat. & decſ. 136. no quod ſi aliquis in antiquis.* Gem. *in conſ. 38. in prin.* ¶ Septimo principaliter conſidero in fauorem dominorum Valſenenæ, poſito & non conceſſo, præmiſſa omnia ceſſarent, quæ ipſa tamen fortiſſime vrgent adhuc in mero poſſeſſorio & omiſſis exceptionibus pertinentibus ad petitorium, potior videtur cauſa ipſorum dominorum ſuper iure patronatus, & conſidero pro fundamento quod poſſeſſio ſeu quaſi iuris patronatus acquiritur ex vnic. præſentatione quæ effectum habuerit ſecuta inſtitutione. *cap. conſultationibus. & ibi de iure patro.* glo. & Doctores *in c. eccleſia ſancta de can a poſſeſ. & propriet.* Bald. *in conſil. 33. Quidam nobilis. in fin. lib. 1.* Abb. *in c. cum olim de cauſa poſſeſ. & propriet. & in conſil. 54. columna 2. lib 1.* Socin. *in conſil. 2. col. 1. lib 2.* Dec. *in conſ. 117. col. 2. poſt med. in conſ. 124. in princip. in conſ. 126. colum. 1. in conſ. 127. in princip. in conſil. 179. colum. 1. circa med. & in conſil. 134. in prin.* ſed hic probatur de pluribus præſentationibus ipſorum dominorum Valſenenæ tam per illas atteſtationes de antiquo receptas quam ex ſcripturis præſentationum & inſtitutionum domini Ioannis Georgii Iſnardi, & iſta poſſeſſio ſeu quaſi iuris patronatus non parum confirmatur ex illis inſtrumentis acquiſitionum caſtri Valſenenæ in quibus principaliter & expreſſe fit mentio de iure patronatus, & ex quibus efficaciter probatur ipſum ius patron. vt ſupra dictum eſt in fundamento, & ſic iuſtificatur poſſeſſio iuris patronatus ex ro titulo, vt habetur in *l. iuſte cauſam. de probatio.* iuſtificatur etiam iſta poſſeſſio iuris patronatus, quia rectores præſentati & inſtituti ſteterunt in poſſeſſione beneficii palam & publice ſciente monaſterio S. Anaſtaſiæ aut eo ſciente valente, per ea quæ no. Calder. *in conſil 3. & in conſ. 6. in tit. de cauſa poſſeſ. & propriet. & in conſ. 12. in tit. de iure patronatus* Dec. *in d. conſil. 127. colum. 2. poſt med. in d. conſil. 114. colum. 1. & in d. conſ. 179. colum 2. circa med.* vbi tamen Deci. ſolum allegat illud conſil. 12. Calder. ¶ Conſidero etiam in hac materia quod attendimus vltima poſſeſſio, id eſt, vltima præſentatio vt præſeratur in beneficio qui ſuit præſentatus ab eo; quæ repetitur feciſſe vltimum actum poſſeſſionis aut præſentationis. *d. c. cum eccleſia de can. poſſeſ. & propriet. vbi vltimo & immediate.* Feder. de Senis *in conſ. 2. 4. colum. 2. circa med. verſic. ad ſecundum.* Old. *in conſ. 312. Thema quæſtionis. ideo colum 2.* Rota *d. 57. Quidam inſtituerunt in antiquis* Dec. *in d. conſil. 117. colum. 1. poſt med. verſ. quod autem quaſi poſſ. pro. in d. conſilia 114. columna 1. in d. conſil. 126. colum. 2. circa med. verſ. præterea & ſecundo principaliter. & in d. conſ. 179. colum. 2. circa med.* ſed vltimus rector dictæ eccleſiæ fuit ei præſentatus à dominis Valſenenæ, & ſic vltima poſſeſſio conſideratur ex parte ipſorum dominorum immediate. ¶ Hoc ita præſuppoſito, quod ſufficiat vnica præſentatio ad acquirendum ius patronatus & quod vltima præſentatio attendatur. Dico, quod licet ius collationis pertineret, adhuc pronunciandum in veritate ad ipſum monaſterium, prout minime pertinet, adhuc pronunciari debet in fauorem domini Ioan. Georgii præſentati à dominis Valſenenæ, exiſtentibus in poſſeſſione ſeu quaſi iuris patronatus, licet ius patronatus ad eos in veritate non pertineret & ideo inſtitutus ad præſentationẽ poſſeſſoris mouendus ab eccleſia non debet, licet ius præſentandi aut conferendi ab alio euincatur *d. c. conſultationibus. de iure patronatus. facit text. in c. querelam. de electio.* not. Feder. de Senis *in d. conſ. 234. colum 2. circa med. verſic. ad vnica propoſito.* vbi Feder. quod exiſtens in poſſeſſione præſentandi poteſt vti ſua poſſeſſione donec feratur ſententia contra eum ſuper proprietate.

et dic. Calde. *in conſ. vlt. in tit. de iure patrona.* Dec. *in d. conſ.* [illegible] *col. 2.* Imo præſentatus ab eo qui [illegible] poſſeſſione præſentandi præfectur præſentatus [illegible] abeo ad quem proprietas pertineret iuris patronatus. Ant. de Butr. Alb. [illegible] *in c. in conſultationib. de iure patrona.* Dec. *in d. conſ.* [illegible] *col. 1 circa med. in d. conſ. 124. col. 2. in d. conſ. 126. col. 2. poſt med. in d. conſ.* [illegible] *9. col. 2. poſt med. & in d. conſ. 134. poſt princ.* id [illegible] collatione vt illa præfecatur, quæ facta ſit ab eo qui eſt in poſſeſſ. conferendi licet ipſum ius conferendi ad alium pertineat. Rota *in d. deciſ.* [illegible] *in antiq.* nec vinatur collatio poſſeſſoris licet poſtea pronuncietur contra eum in petitorio *d. c. conſultationibus* Rota *deciſ. 575. Verum ſunt præſentatus. in antiq.* Dec. *in d. conſ. 126. col. 1.* quod ipſum procedit etiam in temporalibus & prophanis [illegible] in quibus poſſeſſio ſeu quaſi validat actum donec à tali poſſeſſione quis amoueatur *l. Barbar. ff. de offi. prætor. l. pen. ff. de aqua quotid. & æſtiu.* late Innoc. *in c. nihil. de electio.* Bart. *in conſ. 82. Punctum quæſtionis col. 1* Bald. *in conſ. 177. In iſta capitura. lib. 2.* vbi Bald. quod ſufficit quem eſſe in quaſi poſſeſſione iuriſdictionis, vt acta valeant. Itaq; omnibus modis dicendum videtur valere præſentationem dom. Ioan. Georgii factam à dom. Valſeneriæ tanquam exiſtentibus in poſſeſſione præſentandi, poſito ius præſentandi ad eos non pertineret, quod ipſum tamen pertinet, vt ſupra late probauimus, & ſi ſufficit ſola poſſeſſio ſine iure proprietatis imo & vnicus actus poſſeſſionis, vt ſupra oſtenſum eſt, quid hic dicemus vbi cum poſſeſſione concurrit ius patronatus probatum vt ſupra, & vbi plures actus præſentationum interuenerunt, vt ſupra vidimus? ¶ Octauo fundatum videtur ius domini Ioan. Georgii Rinaldi ex regula Cancellariæ de triennali poſſeſſione pacifica: cum tenuerit & teneat ipſum beneficium longiori tempore pacifice ante lit. hanc motam, & de quo poſſeſſorio domini Ioan. Georgii, & do. Ioan. ſecundi deductum fuit in dictis poſitionibus, & in eis expreſſe eſt legatum ius dictæ regulæ Cancellariæ de triennali poſſeſſione. Ex quo etiam capite apparet de iniuſtitia repulſionis ſiue reiectionis dictarum poſitionum, nam habens ius in beneficio ſiue ratione proprietatis ſiue ratione poſſeſſionis illud perdit per dictam regulam patiendo alium poſſidere beneficium pacifice per triennium ex titulo ſaltem colorato. Ideo ſi perdidit ius, etiam poſſeſſio, ergo opponi poteſt exceptio [illegible] perdidiſti ius poſſeſſionis: alias fruſtra illud perditum eſſet ſi de tali perditione opponi non poſſet. Pro quo adduco Feder. de Senis *in conſilio 90. Caſus talis eſt, quidam clericus.* vbi quod agenti poſſeſſorio obſtat exceptio quod perdidit agens ius, quod habebat ſuper ipſo poſſeſſorio, puta trahendo reum ad vetitum examen, vt quia clericus traxit clericum coram iudice laico. Poſtremo in dubio videtur pronunciandũ contra d. Abbatiſſam, quia contra eam eſt præſumptio iuris communis vt ſupradictum eſt, & quia poſt erectum epiſcopatum, in ciuitate Saluciarum omnia beneficia eius diœceſis reducta fuerunt ad collationem ordinarii. Ad allegata in contrarium nihil eſt quod reſpondeatur, quia ſupra abunde & in ſpecie reſponſum eſt, quod imo opponi poteſt exceptio defectus proprietatis. Secundo reſponſum eſt, quod etiam in mero poſſeſſorio potior videtur cauſa dominorum Valſeneriæ. Tertio reſponſum eſt [illegible] octauo fundamento quod perditum eſt omne ius pa[illegible] etiam in poſſeſſorio per poſſeſſionem triennalem d. Ioan. [illegible] ndi & Ioan. Geo[illegible] quæ exceptio perditæ poſſeſſionis opponi potuit & poteſt. ¶ Ex præmiſſis inferuntur duo corrola[illegible] P[illegible] mum quod omnino pronunciari debeat in fauorem dominorum Valſeneriæ etiam ſine illis poſitionib. Secundum quod [illegible] tam poſitiones ipſæ ad maiorem cautelam admitti debeant. ¶ Neq; obſtant aſſertæ ſententiæ, quia leguntur M[illegible] fauorem eius de cuius capacitate non conſtat, & [illegible] beneficium [illegible] laico conferri non poteſt, ita nec per ſententiam la[illegible] adiudicari, ſi enim collatio ſummi pontifis [illegible] ſi non appareat de capacitate impetrantis vt ſupra [illegible] ortiori erit nulla ſententia [illegible] ferens [illegible] cuius capacitate non conſtat. ¶ Secundo reſ[illegible] ſententia lata in cauſa beneficiali nunquam [illegible] eat in reſpectu [illegible] eius, quia etiam appellat[illegible] poteſt cognoſcere de [illegible] *cum Bertold. de re* [illegible] *trans. ſpectiue. in antiquis.* ¶ [illegible] o reſpondeo, [illegible] paſſa eſt procedi, & [illegible] in merito peti [illegible] beneficiatum & [illegible] appellatum quo [illegible] contra ſententiam quæ in rem tranſi[illegible] *in c. cum dil.* [illegible] *& in d. c. cum Bertold.* [illegible] *lat. in l. pacto ſuo. volum. 5. verſi.* [illegible] *ſi ac hoc quæ ſunt ſun*

vel alie ser. Sautilian. [illegible] Decembris 154[illegible] A[illegible] urbano I.V.D.

SVMMARIA.

1. *Executores teſtamenti non poſſunt tranſigere ſuper bonis* [illegible] *ſtu.*
2. *Quomodo procedatur in re eccleſiaſtica quando iura non* [illegible]
3. *Bona pauperum gaudent iiſdem priuilegiis, quibus bona eccleſiæ.*

CONSILIVM CCCXXIII.

Pro inclyta communitate Saluciarum.

DIVINO ſubſidio ex corde poſtulato. Quæritur an executores teſtamenti quondam Spec. de Petri Vacchæ ciui Saluciarum & domini Bel[illegible] dere dati ad diſtribuendum bona pauperibus relicta, po[illegible] int tranſigere ſuper ipſis bonis cum heredibus teſtator[illegible] ¶ 1 Breuiter non arguendo ad par[illegible] quia temporis anguſtia non concedit, puto quod non. & [illegible] ſidero quod iſti executores habent minus iuris in talibus bonis quam habeat prælatus in bonis eccleſiæ, quia fructus eccleſiæ dicuntur ipſius prælati quatenus indiget pro victu ſuo licet ſuperflua teneatur conuertere in piam cauſam *cap. 1 qu. ſt. 82. d. c. paſtor. & c. ſ. queſt. 2. c. videntur. & c. de reddetib. 12. q. 1* [illegible] *c. cum ſis ep. nulli epiſcopatum. & c. quatuor 12. q. 2.* ſed iſti executores nihil commodi percipiunt ex iſtis fructibus ¶ Secundo prælatus poteſt d[illegible] de fructibus eccleſiæ, *vt per gl. in cap. fin. 5. q. 3* Abb. *in cap. 2. de donat.* Quod tamen intell[illegible] o cum modica læſione eccleſiæ & [illegible] a forma. Calde. *in conſ. 6. in tit. de rebus eccleſ. non al.* Similiter [illegible] prælatus donare ſeu remittere hodie miũ debitum ec[illegible] *glo. in c. bona res. 12. q. 2.* Calde. *in conſ. 1. in tit. de his quæ fiunt à præla. ſine conſenſu cap.* Poteſt etiam prælatus donare canonicam portionem debitam ratione mortuariorum in præiudicium ſu[illegible] non ſucceſſoris. Calde. *in conſ. 1. in tit. de his quæ fiunt à præla.* ſed executor teſtamenti nihil poteſt donare, ſed tenetur diſtribuere ad formam teſtamenti, & talis executor potius æquiparatur tutori aut curatori quam prælato reſpectu poteſtatis, ſed conſtat quod prælatus habet maiorem poteſtatem in bonis eccleſiæ quam tutor aut curator in bonis pupilli vel adulti. *vt* Abb. *in conſ. 62. volum. 1. in fin. lib. 1. & in conſ. 10. lib. 2.* Socin. *in l. legatum col. 2. ff. de leg. 1.*

Hoc ita præſuppoſito quod maior ſit poteſtas prælati in bonis eccleſiæ quam vnius executoris in bonis pauperum. Dico quod prælatus tranſigere non poteſt de rebus immobilib. eccleſiæ, quando ex tali tranſactione ſequeretur alienatio, quia bona eccleſiæ parti remitterentur in totum aut in partem niſi ſeruata forma iuris & interuenientib. ſolennitatibus requiſitis in alienatione rei eccleſiaſticæ Fede. de Senis *in conſ. 94. Caſus talis eſt prælatus.* vbi quod prælatus habens capitulum ſolus ſine capitulo compromittere aut tranſigere non poteſt, etiam vbi non ſequitur totalis alienatio, & vbi agitur de præiudicio eccleſiæ temporali tantum, non perpetuo. Cum capitulo autem poteſt compromittere & tranſigere ſine licentia ſuperioris ſuper re inferente præiudicium temporale tantum, non perpetuum *cap. de cætero 1. venien. de tranſ. & c. ſuſi eſſent de praben. gl. in c. ex multiplici. de decimis.* Gem. *in conſ. 10.* ſecus vbi agitur de præiudicio perpetuo, quia tunc requiritur authoritas. Io. Andr. *in c. peruenit. & in c. eum tempore de arbit.* Gem. *in conſ. 96. col. 1.* & quod in pacto aut tranſactione per quam inducitur alienatio rei eccleſiaſticæ ſint neceſſariæ ſolennitates requiſitæ in alienatione rei eccleſiaſticæ, voluit Gem. *in conſ.* [illegible] *29. col. 1 circa med.* Ad idẽ adduco Abb. *in conſ. 56. lib. 1.* vbi quod prælatus non poteſt compromittere quando ex tali compromiſſo ſequitur alienatio. ¶ Si vnus Epiſcopus aut prælatus non poteſt compromittere aut tranſigere quando ſequitur alienatio rei eccleſiaſticæ niſi ſeruatis ſolennitatib. iuris, quanto minus permiſſum id erit perſonis laicis ius tantũ exequendi, & diſtribuendi obtinentibus: ideo mirandum eſt quomodo tales executores adducantur vt tranſigant ſuper bonis pauperum, nam talis tranſactio deſideranda eſt ab Epiſcopo aut alio poteſtatem ad id obtinente: tales enim executores temeritatis & impudentiæ accuſari poſſent ſi bona pauperum in aliis tranſigendo alienarent ſine ſolennitatibus iuris ne [illegible] cenſuras effugerent ¶ Secundo principaliter conſidero in caſibus, [illegible] q[illegible] bus prælatus poteſt tranſigere cum authoritate ſuperiori & ſeruatis ſeruandis, illud [illegible] intel[illegible] tur & proced[illegible] 2 dibus quando [illegible] leſiæ [illegible] *pactum cur. mor. v. alie. vid. C. de pactu cum do. no.* Sed [illegible] tuta pauperũ [illegible] obſcura

obſcura aut dubia, imo clariſſima, per inſtrumenta teſtamenti & tranſactionis, quam ipſam tamen tranſactionem conſtare non putem ſine ſolennitatibus iuris. Imo in facto nulla oritur dubitatio, & ſi quid dubitationis à parte excogitetur, illud totum in iure conſiſtit, de facto autem non eſt quæſtio, ſed ius ipſum ſemper eſt certum & liquidum. *l. ornamentorum. ff. de auro & argen. lega.* Ideo ſtatutum cogens conſanguineos aut coniunctos ad compromittendum aut tranſigendum, non habet locum vbi ſolum eſt quæſtio iuris, non etiam facti. Bal. *in l. ancillæ. per illum tex. in prin. C. de furtis* Alex *in conſi. 61. colum. 2. circa med. lib. 2.* Iaſ *in l. pen. colum. fin. verſi. hinc dicit Bal. C. de pactis.* Itaq; cum ſolum ſit quæſtio iuris, illud videtur declarandum per iudicem eccleſiaſticum competentem, non per laicos. ¶ Tertio dico quod poteſtas iſtorum executorum adeo eſt modica quod non ſolum non poſſunt tranſigere de bonis pauperum ex qua tranſactione ſequatur alienatio, bona pauperum in alios transferendo, imo ne quidem poſſunt facere conuerſionem vnius vſus ad alium vſum, etiam ſi voluntas teſtatoris ſecundum formam ab eo traditam impleri non poſſit. Ita Paulus de Caſt. *in conſilio 302. Viſis & diligenter conſideratis. columna fin. verſi. contrarium tamen. &c. lib. 1.* Imo executor ad diſtribuendum pauperibus non poteſt eligere pauperes extraneos, ſed tenetur diſtribuere pauperibus domicilii. Ioan. An. *in c. religioſis. de teſt. lib. 6. ſuper gl. quæ incipit in re certa.* ſequitur Feder. de Senis *in conſi. 282. circa fin.* vbi quod ſecus eſt in Epiſcopo, vbi dicitur executor iuris, quia ipſe poteſt in extraneos pauperes diſtribuere. Nec dicatur procedere præmiſ-
3 ſa in bonis eccleſiarum, hic enim agitur de bonis pauperum, quia † bona pauperum gaudent eiſdem priuilegiis quibus bona eccleſiæ. *l. omnia priuilegia.* vbi Bart. & Doct. *C. de ſacroſ. eccl. §. fi. in auth. de eccleſia. tit. c. ex liter. de conſuet.* tradit Alex. *in conſil. 9. colum. 4. in fi. lib. 2.* vbi quod eadem ſolennitas requiritur in alienatione rei hoſpitalis quæ in bonis eccleſiæ per tex. *in §. nos igitur. in auth. de non aliena. auth. hoc ius porrectum.* vbi Barto. & Dec. *C. de ſacr. eccleſ.* no. Dec. *in c. 1. colum. 9. verſi. non obſtat quod Matheſil. dicit. de probatio.* ¶ In ſimili caſu ſcripſi pro cruciata Saluciarum, vbi concluſimus non valere diſpenſationem Pontificis in contrarium eam ex defectu voluntatis quam poteſtatis, me tamen ſubmittendo determinationi ſanctæ matris Eccleſiæ & Reuerendiſſ. Rotæ Senatus, & libenter & auide viderem determinationem Rotæ ſuper hoc. Agitur enim res periculoſiſſima in conſcientia & pleniſſima ſcandali quod auferatur pauperibus cõtra expreſſam voluntatem teſtatoris. ¶ Ex quibus concludo rem omnem ad Epiſcopum & iudicem eccleſiaſticum cuius in ea re poteſtas ſit, remitti oportere, ſaluo ſaniori iudicio. Sauiliani die 26. Decembris in feſto diui Ioannis Euangeliſtæ patroni mei 1547. Aymo Crauetta ex Sauiliano I.V.D.

S V M M A R I A.

1 *Quando heres ex teſtamento poteſt adire ab inteſtato.*
2 *Et quando aditio ab inteſtato prodeſt etiam aliis heredibus legitimis.*

CONSILIVM CCCXXIIII.

Pro Magnificis dominis Aymone & Bonifacio ex Comitibus Plozaſchi & dominis Scalengiarum, contra Magnificum Comitem Fruzaſchi.

DIVINO ſubſidio ex corde poſtulato. Magnifici domini Aymo & Bonifacius ex Comitibus Plozaſchi & dominis Scalengiarum repudiauerunt hereditatem Magnificæ dominę Bernardinæ de Valpergia earum materteræ, quæ ipſos repudiantes heredes inſtituerat pro dimidia, & eam ipſam hereditatem ab inteſtato & pro dimidia adiuit quondam magnifica domina Barbara mater ipſorum repudiantium & ſoror ipſius dominæ Bernardinæ. Similiter Magnifici domini Guilielmus & Mamon de Valpergia nepotes dictæ dominæ Bernardinę & heredes ab ea inſtituti pro alia dimidia adierunt hereditatem ab inteſtato, proteſtantes quod non intendebant nec intendunt eſſe heredes ex teſtamento. Quæritur an valeat talis aditio? ¶ Videretur dicendum quod non, quia cauſa teſtati facit ceſſare cauſam inteſtati. *l. quamdiu. 2. ff. de acq. her.* nec valet aditio ab inteſtato quoties ex teſtamento heres quis eſt & econtra. *l. ſi is ad quem. ff. de acq. her.* Ideo videtur quod do. Guilielmus & Mamon heredes teſtamentarii ab inteſtato adire non potuerunt, conſequenter quod ſine iure & actione experiantur ab inteſtato. ¶ Similiter videtur quod ſine iure & actione experiãtur domini Aymo & Bonifacius cum repudiauerint hereditatem pure & ſimpliciter. Neq; videtur obſtare quod agant tanquam heredes matris, quæ adiuit ab inteſtato ob repudiationẽ aliorum, quia ſtante teſtamento dominæ Bernardinæ do. Guilielmus & qui ſimpliciter non repudiauerunt ſed ſolum ex teſtamento, præſuppoſito quod ab inteſtato adire nõ potuerint, heredes remanſerunt ex eo teſtamento, ob id non potuit domina Barbara adire ab inteſtato, quia hoc modo domina Bernardina deceſſiſſet pro parte teſtata, & pro parte inteſtata quod ipſum iura non admittunt. *l. ius noſtrum. ff. de reg. iur.* Imo videtur iſto caſu quod portio dominorum Aymonis & Bonifacii accreuerit aliis coheredibus, qui omnino repudiauerunt. Imo adiuerunt licet ab inteſtato, quod ipſum tamen facere non potuerunt vt ſupra, & quod portiones eorum accreuerint aliis coheredibus, videtur tex. *in l. & quæ ex duabus. §. 1. ff. de acq. her.* ¶ Sed præmiſſis non obſtantibus contrarium puto de iure verius, quod imo viribus cõſtet vtraq; aditio, id eſt, dominæ Barbaræ ac dominorum Guilielmi & Mamonis ab inteſtato. *toto titul. ff. & C. ſi*
quis omiſſa cauſ. teſtam. In quibus titul. habetur quod heres † ex 1
teſtamẽto ad quem etiam ab inteſtato hereditas pertinet, poteſt adire ab inteſtato omiſſa cauſa teſtamenti, licet ita adeundo incidat in edictum prætoris, quando in fraudem ita adit legatorum aut fideicommiſſorum, ob id tenetur præſtare legata & fideicommiſſa in teſtamento relicta, perinde ac ſi ex teſtamento heres eſſet, & maxime hoc & euidentiſſime probatur *in l. ſi non ſolum. in prin. ff. eod. tit. ſi quis omiſſa cau. teſta.* vbi quando heres in ſolidum ſcriptus ab inteſtato ſimul cum alio herede legitimo, vterq; tenetur ad legata, etiam is qui ſcriptus non fuit heres. Ecce ergo quod ab inteſtato aditio quidem tenet non obſtante teſtamento, licet talis aditio non noceat legatariis & fideicommiſſariis. Alias enim ſi aditio ab inteſtato non teneret, conueniri alter non poſſet, qui in teſtamento heres ſcriptus nõ eſt, & hoc ipſum quod teneat aditio ab inteſtato licet tertius non præiudicet quoties in fraudem fit, probant fere leges dictorum titulorum. Conſtante igitur aditione ab inteſtato, male opponitur contra agentes quod ſine iure experiuntur. ¶ Solum ſupereſt ad cõtraria reſpondere, quibus confutatis clariſſima omnia fiant. Itaque non obſtat primum argumentum, quod cauſa teſtati facit ceſſare cauſam inteſtati, quia illud procedit quando in teſtamẽto eſſet ſcriptus vnus ab inteſtato hereditas ad alium pertineret, nam tunc non poteſt adiri hereditas per heredem legitimum, qui ipſe excluditur per heredem ſcriptum. Secus quando idem eſſet heres legitimus & teſtamẽtarius, quia talis poteſt adire ab inteſtato omiſſa cauſa teſtamẽti, & tenet aditio, licet ita adiens incidat in edictũ, & teneatur ad onera in teſtamento derelicta, perinde ac ſi ex teſtamento heres eſſet per ſupradicta. ¶ Non obſtat ſecundum argumentũ quod non tenet aditio ab inteſtato quãdo ex teſtamento quis eſſet heres *d. l. ſi is ad quem. ff. de acqu. her.* quia illud procedit data ignorãtia adeuntis putantis ſe heredem ab inteſtato cum ignoraret teſtamentum factum, vel ſi quis adeat ex teſtamento putans illud iuſtum aut validum, nam talis ignorantia vitiat aditionem, quia oportet ad validitatem aditionis vt ſciat quis cauſam ſuæ acquiſitionis aut aditionis, & ita loquitur textus *in d. l. ſi is ad quem.* ſecus quando ſcit quis teſtamentũ & ſe ſcriptum heredem, & nihilominus adit ab inteſtato cum ſit heres legitimus, tenet aditio cum ſciat cauſam ex qua adit, & tunc ita adiens dicitur renunciare teſtamento, ita loquitur text. in terminis & ibi gloſſ. & Doct. declarans *in l. illud. ff. de acq. her.* Ex quo tex. clariſſima reddi videtur vniuerſa difficultas. ¶ Non obſtat tertium argumentum quod domina Barbara non potuit adire ab inteſtato ex repudiatione filiorum ſuorum cum adſint alii coheredes qui ſimpliciter non renunciauerunt, quia reſpondeo quod imo potuit domina Barbara adire ab inteſtato, quia vbi
heres ſcriptus repudiat ex teſtamento adit ab † inteſtato, facit 2
locum etiam aliis heredibus legitimis exiſtentib. in pari gradu, & ſic eius aditio ab inteſtato prodeſt etiam aliis heredibus legitimis, ita expreſſe dicit textus *in d. l. ſi non ſolum. in prin. ibi. cui etiam profuit. ff. ſi quis omiſſ. cau. teſtam.* Itaque cum domini Guilielmus & Mamon repudiauerunt ex teſtamẽto & adierunt ab inteſtato, ſine dubio talis aditio profuit dominæ Barbaræ, quæ pariter ab inteſtato admittebatur. ¶ Non obſtat quod portiones dominorum Aymonis & Bonifacii, qui ſimpliciter repudiauerunt, debent accreſcere dominis Guilielmo & Mamoni coheredibus teſtamentariis. *d. l. quæ ex duab. §. 1. ff. de acq. her.* quia argumentũ procederet ſi ſoli Guilielmus, & Mamõ eſſent heredes, ſed cum

repudiauerint ex teſtamento & adierint, ab inteſtato autem concurrat domina Barbara coheres legitima, dico quod pars repudiantium accreſcit omnibus coheredibus legitimis, quia portio heredis ſcripti repudiantis, pertinet ad heredes legitimos. *l. ſi quis pecuniam in princ. ff. ſi quis omiſſa cau. teſtam.* Itaque ſi Gulielmus & Mamon adiuiſſent ex teſtamento, quia nunc ipſi ſoli heredes eſſent excluſa domina Barbara, & ceſſante cauſa inteſtati propter teſtamentum, ipſi Gulielmo & Mamoni ſolis accreuiſſet portio repudiata, ſed cum adierint ab inteſtato & ab eo inteſtato habeant coheredem dominam Barbaram, omnibus coheredibus accreuit, & perinde eſt ac ſi domini Aymo & Boniſacius heredes ſcripti non fuiſſent. ¶ Non obſtat domina Bernardina non potuit decedere pro parte teſtata & pro parte inteſtata, quia dico quod ſtante aditione omniũ ab inteſtato ceſſat argumentum, nam illud procederet ſi dom. Gulielmus & Mamon adiuiſſent ex teſtamento & dom. Barbara vellet venire ab inteſtato, etenim nõ poſſet, ſed tunc accreſceret portio repudiata aliis coheredibus ſcriptis adeuntibus ex teſtamento. Similiter, ſi dom. Aymo & Bonifacius adiuiſſent ex teſtamẽto, non potuiſſent domini Gulielmus & Mamon adire ab inteſtato ſed totum accreſceret dominis Aymoni & Bonifacio adeuntibus ex teſtamento, prout etiam declarat Corn. *in conſ. 88. col. pen. poſt medium. verſi. tamen ad hoc reſponderi poteſt. lib. 1.* licet non ita clare expliuet, & iſta declaratio arguitur neceſſaria & ratione conſtans in hac difficultate alioquin ſatis intricata. ¶ Itaq; concludo quod iſta oppoſitio de teſtamento dominæ Bernardinæ pertinet ad materiam *tit. l. 1. C. ſi quis omiſſa cauſa teſta.* Conſequenter apparet pertinere talem oppoſitionem ad legatarios aut fideicommiſſarios ipſius dominæ Bernardinæ, ipſius autem domini & comitis Fruzaſchi nihil omnino pertinet ea res cum teneat aditio ab inteſtato omiſſa cauſa teſtamenti, licet non noceat legatariis & fideicommiſſariis quoties in fraudem ita agitur, itaque procedit reſponſio reddita in priori conſilio quod contra talem oppoſitionem exceptio obſtat, tua non intereſt. ¶ Optimum tamen fuit dubitare circa hoc ad inueniendam explicationem & claritatem totius difficultatis, & ita de iure reſpondeo, ſaluo ſaniori iudicio. Sauiliani die 28. Decembr. 1547. Aymo Crauerta ex Sauiliano. I.V.D.

SVMMARIA.

1 *Conſuetudo debet plene probari. & probatio dicitur multum difficilis.*
2 *Quod requiratur ut plus petens cadat à iure ſuo*
3 *In inſtrumentis attenditur conſuetudo loci in quibus fiunt.*

CONSILIVM CCCXXV.

Pro illuſtri domina Fauſtina de Varnano contra illuſtrem dominam Camillam de Malateſtis.

DIVINO ſubſidio ex corde poſtulato. Plura mouentur dubia in cauſa illuſtris dominæ Fauſtinæ relictæ quondam illuſtris domini Sigiſmondi de Malateſtis agentis ad reſtitutionem dotium contra illuſtrem dominam Camillam neptem & heredem memorati domini Sigiſmundi, & primo incipiendo à dilatoriis opponitur de cautione actoris nõ præſtita circa reſtitutionẽ expenſarum in caſum ſuccumbentiæ & proſecutionem iudicii. Ad quam exceptionem reſponſum fuit per D. procuratorem ipſius dominæ Fauſtinæ quod talis cautio abiit in diſſuetudinem & ab aula receſſit, vt per Bart. *in l. generaliter. C. de epiſc. & cle.* Ang. de Aret. *in §. ſed hodie. inſtit. de ſatiſd.* Rom. *in conſi. 62. Florentina conſtitutio. in fin.* Alexand. *in conſi. 57. colum. 3. verſic. ſed præmiſſis non obſtantibus. lib. 2.* ¶ Nec obſtat quod non appareat de tali conſuetudine contraria tui, & quod conſutudo pro-
1 bari debet tanquam conſiſtens in facto, imo † plane probari debet conſuetudo. Bartol. *in repet. leg. 2. q. 27. C. quæ ſit longa conſuet.* quæ probatio conſuetudinis dicitur multum difficilis Bart. & Doctor. *in l. de quibus. ff. de legibus.* ideo magis eſt opus diligentia in formandis capitulis ſuper probatione conſuetudinis. Cardin. Floren. *in c. fin. q. 40. in fin. de conſuet.* Curt. iun. *in conſi. pen. colum. pen. in princip.* Nec defertur iuramentum ſuppletiuum in probanda conſuetudine. Bal. *in d. l. de quibus. colum. antepen. verſi. item vbi agitur. de probando* ſequitur Alexan. *in conſi. 173. colum. 2. in fin. lib. 6.* ¶ Nam reſpondetur quod ſatis videtur probata conſuetudo per aſſertionem tot Doctorum dicentium conſuetudinem ita eſſe Pau. de Caſt. *in conſi. 457. In caſu propoſito & pluribus dubiis. in fin. lib. 2.* Soc. *in conſ. 25. col. 7. verſi. 4. eadem concluſio. & in conſ. 3. col. 2. lib. 2.* Guid. Pap. *q. 139. & q. 565. col. 4. verſi. quib. conſuetudinib.* Iaſ. *in conſ. 168. col. 5. poſt med. lib. 1. & in conſ. 15. in fin. lib. 3.* & poſito iſta opinio ſit dubia quo ad plenam probationẽ, vera tamen videtur quod ad præſumptionem, vt aſſertio doctoris ſuper conſuetudine inducat præſumptionem cui ſtandum ſit donec probetur contrarium. Ita voluit Bart. *d. l. de quibus. col. 8. in fin. in 4. q. princ. ff. de legib.* ſequitur Barba. *inter conſ. Curtii Senioris. in conſ. 67. col. 17. poſt med.* Dec. *in l. 2. §. 1. col. fi. ff. ſi cert. pet. in conſi. 420. in fi. in conſi. 540. colum. 2. poſt med. in conſ. 459. colum. 2. poſt med. in conſi. 691. circa fi. & in conſi. 6 4. colu.* Curt. iun. *in conſi. 6 . colum. 4. circa med.* Gozad. *in conſi. 59. colum. 4. in princ.* & vbi de aſſertione aut dicto vnius doctoris tantum dubitare poſſet, tamen ſtante aſſertione tot illuſtrium Doct. res videtur ſine dubio. Ita Curt. ſen. *in conſ. 75. colum. 24. circa med.* vbi quod communis vſus loquendi probari non debet, quando plures illuſtres Doct. de eo atteſtantur, modo habemus hic atteſtationem plurium Doct. illuſtrium, id eſt, Bart. Rom. Ang. & Alex. vt ſupradictum eſt, qui etiam Doct. mouentur authoritate *glo. in §. 1. inſti. de ſatiſd.* ob id pars aduerſa contendens contrarium, id eſt, conſuetudinem non ita eſſe, tenetur probare, cum ſaltem præſumptionem habeat iuris contra ſe. ¶ Secundo dubitatur de viribus mandati ipſius dominæ Fauſtinæ contra quod opponitur quod eſt monialis in monaſterio ſancti Antonii ciuitatis Ferrariæ, ob id quod agere non poteſt ſine licentia ſui ſuperioris. *ca. vnic. de ſynd. ca. monachi. 16. q. 1. glo. in c. non dicatis. 11. q.* glo. Ant. & Doct. *in cap. cum dilecta. de reſcript.* generaliter nihil poteſt monachus agere ſine licentia ſuperioris: ideo non poteſt conſentire electioni, non poteſt eſſe fideicommiſſarius, non poteſt eligere ſepulturam, non poteſt eſſe iudex, aſſeſſor, aduocatus, procurator, arbiter ſine licentia ſuperioris. Federic. de Senis *in conſilio 104. Primo quæritur. colum. 2.* ¶ Ad iſta reſpondetur quod procedunt in moniali profeſſa, quia ante profeſſionem monialis aliqua dici non poteſt, & appellatione monachi intelligitur de vere profeſſo. *c. ad apoſtolicam. de regular. glo. in c. 1. in verſi. recepto. de religio. dom. lib. 6.* Geminia. *in conſi. 66. circa fin.* & dicit Bald. *in conſil. 197. Omnia pacta. in fin. lib. 5.* quod monialis non dicitur non profeſſa, ſicut ſponſa quæ eſt impubes, non dicitur vxor. hinc videmus quod ſi fiat legatum alicui ſi intrauerit monaſterium illud non debetur niſi facta profeſſione. Dec. *in c. in præſentia. colu. 10. de probatio. & in conſ. 330. colum. pen. ante fi.* in qua ipſa tamen re hæſit Iaſonis ſpiritus *in l. in ſtipulatione. colu. fi. ff. de vulgari.* ſed profeſſio aliqua D. Fauſtinæ nõ docetur nec doceri quidem poteſt, & onus probandi profeſſionem incumbit alleganti cum in facto conſiſtat, quod non præſumitur niſi probetur. *l. in bello. §. facta. ff. de captiuis. c. cum in iure peritus. de offi. deleg. cum ſimilib.* Imo non ſufficeret probare profeſſionem ſimpliciter, niſi probetur quod illa ſit valida. Gemin. *in d. conſ. 66. in fi.* ¶ Hoc ita præſuppoſito quod domina Fauſtina nõ ſit profeſſa licet nouicia. dico quod nouicius habet velle & nolle, & poteſt omnia facere quæ poteſt homo liber, ideo poteſt teſtari & matrimonium contrahere. Ita Fed. de Senis *in conſ. 51. col. fi. ante med.* & licet illud de teſtamento videatur intelligendum quando moritur nouicius ante profeſſionem, ex his quæ ſcripſi *in conſ. 152.* tamẽ ſatis eſt quod interim geſta valent ante profeſſionẽ. Ideo non videtur habenda ratio quod in futurum poſſit profiteri, quia præſens ſtatus eſt conſiderandus & ſecundum præſentem ſtatum iudicandum eſt. *l. mouemur. C. ſi ſer. export. ven.* Anch. *in conſ. 420. Quidam ſer. Anto. colu. fin. circa med.* Ad idem tex. *in l. hac venditio. § fi. ff. de contrah. emp.* venditio fuit facta pro certum & quanti plurimi poſtea repertum fuerit, interim dicitur certa venditio, quia certũ habet precium licet in futurum alterari illud poſſit. Ad idem quod no. Bar. *in l. Titius. in fi. de condit. in debi.* vbi facta reformatione quod omnes repræſaliæ debeant reuideri, & quæ fuerunt reprobatæ non valeant, poteſt interim fieri executio repræſaliarum licet in futurum poſſint reuocari, quia ſecundum præſentem ſtatum iudicium habendum eſt. Ad idem adduco Pau. de Caſt. *in conſ. 418. Viſis & conſideratis diligenter omnib. in pr. li. 1.* vbi ſi fiat compromiſſum ſuper inſtrumento habente executionẽ paratam pendente compromiſſo poteſt creditor petere executionem ipſius inſtrumenti, non habita ratione quod illa retractari poſſit per laudum futurum: quia iudicandum eſt ſecundum præſentem ſtatum antequam laudum prolatum ſit: de cuius tamen dicti veritate videnda ſunt quæ ſcribit idem Pau. *in l. qui fidem. ff. de tranſact. & in l. pecuniam.* vbi Alex. *col. pe. ff. ſi cert. pet.* Iaſ. *in conſ. 2. poſt med. & in con. 109. in 2. dubio. li. 1.* ¶ Sed in terminis addo P. de Caſt. *in conſ. 432. cum ſtatutum principaliter. col. 1. in fi. verſ. 5. principaliter. & col. ſeq. lib. 1.* vbi quod ſolennitas ſtatuti in donatione minoris quæ non eſt neceſſaria

quando

quādo fieret donatio eccleſię aut ad piam cauſam, quæ nō ſubiacet legibus laicorum, eſt tamē neceſſaria quando fit moniali ante profeſsionem, quia ante profeſsionem nō dicitur geri donatio monaſterio, ſed ipſi donatariæ inſpecto præſenti ſtatu, nec profeſsio ſuperueniens trahitur retro ad tempus donationis. Ecce multum in terminis loquitur P. de Caſtr. Eodē modo dicendum eſt ante profeſsionem poſsit nouicia agere ſine conſenſu ſuperioris, neq; obſtare poteſt quod profiteri poſsit, quia præſens ſtatus conſiderandus eſt, non futura profeſsio quæ retro non trahitur. ¶ Secundo principaliter arguitur a ſufficienti partium enumeratione. aut domina Fauſtina obtinebit in hoc iudicio, aut ſuccumbet, ſi obtinebit, nihil eſt quod pars conuenta opponat de nullitate iudicii, quia iudicium eſſet nullum in fauorem monaſterii, non rei. Ideo monaſterium poteſt dicere ego volo iudiciū tenere, nec poſſet pars allegare nullitatem in odium ipſius monaſterio inuito *l. tran actione. 2. C. de tran ſaction. gl. in l. & eleganter. in pr. in ver. nullum ff. de dolo gl. in l. iuris gentium § prætor ait. in ver. dolo malo ff. de pactis*. vbi Ang. gl. *in l. ſi dolo in verſ. reſcindi. C. de reſcin. vend.* vbi quod doloſo non datur actio ſi dolum paſſus velit actum valere: quod in terminis ſententiæ inualidæ tradit Feder. de Senis *in con. 90. Caſus talis eſt quidam clericus. col. 2. poſt med.* quod ipſum infinitis ſimilib. poſſem comprobare, ſed non expedit. Aut ſuccumbet D. Fauſtina & nihil eſt quod præterea quærat aduerſarius niſi circa expenſas litis nam ſi abſoluitur, nihil præterea petet, & ſi dicatur: imo partis intereſt ſi abſoluatur, quia poſſet monaſterium ex integro agere, & ſi opponatur exceptio rei iudicatæ, replicabit de nullitate. Ad illud reſpondetur quod imo ceſſat nullitas cū nouicio ante profeſſionem nec profeſſio ſuperueniens retrotrahitur ad firmationem iudicii; *reg. ſi factum legitime. li. 6. cum ibi no.* ¶ Tertio principaliter reſpondeo, quod vbi præmiſſa ceſſarent citra præiudicium veritatis, fruſtra opponitur defectus licentiæ ſuperioris, quia producit [illegible] aliud mandatum in quo ipſo apparet de ſuperioris licentia, ex qua poſita videtur res extra omnem dubitationem, vt habetur in dicto cap. cum dilecta, de reſcriptis tradit Decius *in cap. 1. in prin. de appellationib.* ¶ Tertio principaliter dubitatur, opponitur contra Dom. Fauſtinam quod petit plus debito, an inciderit in pœnā plus petentis? Breuiter concludo quod non: nam aut quærimus de pœna amiſsionis iuris vt cadat à cauſa, *iuxta l. vnic. in. C. de plus petitio.* & illa non obtinet, quia duo copulatiue requiruntur vt cadat quis à iure ſuo ob pluris petitionem: primum, quod cautionem ſeu obligationem à debitore plus debito exegerit, ita quod promiſsionem extorſerit debito ampliorem. Secundo quod illud tale promiſſum amplius debito exegerit, vt probatur *in dicta leg. vnica. C. de plus petitio.* vbi Bal. & Doc. not. gl. & Do. *in c. vnic. extra. eod. tit.* Bar. *in l. ſi ſeruus. § bone. in fin. ff. de condi. furti & in l. qui ſolidum in princ. ff. de legat. 2.* Alexand. *in conſ. 70 col. ver. 3. principaliter. & in conſ. 83. col. 1 in fi. lib. 6.* Sed horum duorum neutrum hic probatur, ergo, &c. ¶ Secundo vt plus

2 petens cadat à iure ſuo, oportet quod conuincatur plus petiſſe per teſtes aut ſcripturam, ſecus ſi per confeſsionem ſuā. quia fateatur ſe plus petiiſſe, aut per iuramentum partis. gl. & doct. *in d. leg. vnica. in verb. arguatur. C. de plus petit.* Ideo ſi agens confiteatur quandocunq; ante ſententiam & antequam conuincatur, ſe plus petiiſſe, fit locus pœnitentiæ & vitatur illa pœna amiſsionis debiti: ſed hic agens obtulit ſe paratam detrahere ſoluta omnia, ergo, &c. ¶ Conſulo tamen quod in ſpecie confiteatur ſoluta & illa detrahat addendo clauſulam, quod offert ſe paratam accipere quamlibet particularem ſolutionem ſummæ petitæ ſaluo iure reſidui: ex qua clauſula pars ea conſtituatur in mora ſi non offert quod prætendit ſe debere, quam ipſam oblationem ſi non facit apparet quod omnino erat litigatura etiam reſpectu partis vere debitæ, nb id excuſari non poteſt. ita tradit Bartol. *in d. l. qui ſolidum. ff. de leg. 1.* Guid. Pap. *q. 496.* Iaſ. *in l. 1. § ſi ſtipulanti. in fi. ff. de verb. obl.* ſocer meus Purpura *in l. edita. nu. 298. C. de edendo.* ¶ Tertio non poteſt conſiderari pœna plus petentis reſpectu amiſſionis cauſæ, quia ipſa d. Fauſtina non comparuit in iudicio perſonaliter plus petendo nec mandatum ſpeciale dedit, vt debito amplius peteretur: plane ſi quid petitum eſt plus debito, id commiſſum eſt à procuratore generali, ſed procurator generalis nihil poteſt per quod dom. in pœnam cadat. *l. ſi procurator.* vbi late Moder. *ff. de cond. indeb.* Et in terminis procuratoris plus debito petentis, tradit Alexand. *in d. conſilio 83. columna 3. verſi quinimo etiam ſupradicta libro 6.* ¶ Aut loquimur de pœna pluris petitionis reſpectu expenſarum ratione temeritatis aut culpæ plus petentis, & in iſtis fateor quod deberentur quando apparet quod debitor litigaturus non erat, nec damnū expenſarum paſſurus ſi debito amplius petitum non eſſet, etiam quod agentē pœnituerit, quia talis pœnitentia admitti nō debet cum damno partis ſine refectione expenſarum: ſicut dicitur de corrigente, quod licet admittatur ad corrigendum, tenetur tamen ad expenſas aduerſario. Bar. *in l. rura. in fi. C. de omni agro deſerto. lib. 11.* Dec. *in l. edita. circa fi. C. de eden. & in terminis. de pœniten.* circa pluris petitionem quod ſemper teneatur ad expēſas, quas inde debitor paſſus ſit ob pluris petitionē. nn. Hoſt. *in d. c. vni. de plus pet.* ſequitur Iaſ. *in § qui agens ver. ſed hec quidem. colu. 2. ante med. inſti. de actio.* ¶ Sed in caſu iſto non puto d. Fauſtinam teneri ad aliquas expenſas ratione pluris petitionis. Primo propter illam clauſulam quod ſolum intendit petere & cōſequi quod ſibi debetur offerendo ſe paratam detrahere omnia quæcunq; ſoluta, & accipere quamlibet particularem ſolutionem ſaluo iure reſidui: nam tunc debitor dicitur in mora reſpectu partis liquidæ niſi [illegible] ita Guid. Pap. *in dict. q. 496.* per doctr. Bar. *in dict. l. qui ſolidum.* ¶ Secundo iſtud clarius procedit ſi poſt detractionē ſolutorū in ſpecie adhuc obduret pars iudicium & litē ſuſtineat: nam tūc apparet quod etiā ab initio æque fuerat litigatura licet plus debito petitū quid nō eſſet, ob id dicere non poteſt quod vexata fuerat ſuo commodo expenſarum ratione pluris petitionis, ex quo poſt detractionem illius pluris a lite non deſiſtit: ſicut in ſimili dicimus quod ignorantia cōtrahentium matrimonium non excuſat quando poſt habitam ſcientiam prohibitionis non abſtinent a copula nec prohibito deſiſtunt. *l. ſi adulterium cum inceſtu. § idem Pollionis. ff. de adulter. l. qui contra C. de inceſtis nup. c. cum inhibitio. de clande. deſponſ.* Anch. *in conſil.* 401. *Stipolimi. columna 1.* Similiter non excuſatur mater quæ non petiit prouideri de tutore filio pupillo eo quod dicat ſe fuiſſe minorem de tempore mortis mariti quando facta maior æque fuit negligēs. Bal. Nouel. *in tract. de dote. part* 11. *ſolu. 23. verſ. quid autem ſi tempore.* ſed magis in terminis adduco Guidu. Papæ. *q. 138. & q. 436. colum. 13. qu. 48.* vbi quod cauſa iuſta litigandi ab initio conſiderari non poteſt, quando ceſſante tali cauſa iuſta adhuc litigat quis, quia ipſe præſumitur quod ab initio ſciret ſe fouere cauſam iniuſtam. per text. *in ſimili in l. 1. § circa. ff. de exc. doli.* Et licet reus ipſe in expenſis forte condemnandus non eſſet quamdiu perſeueraſſet agens in pluris petitione ſine clauſula illa de qua ſupra, offerēdo ſe paratam accipere quamlibet particularem ſolutionem ſaluo iure reſidui, tamen quod ipſe agens & plus petens teneatur ad expenſas ob pluris petitionem, quādo apparet quod etiam ceſſante illo pluri reus erat æque litem excepturus, hoc è iuris ratione & æquitate videtur abhorrere. ¶ Quarto principaliter dubitatur de fide inſtrumenti dotalis in actis producti, cōtra quod fuit oppoſitum, tanquam non habeat forte ſolennia requiſita in loco productionis. Breuiter pro reſponſione dicitur ipſum inſtrumentum rogatum eſſe in ciuitate Bononiæ & factum eſſe ſecundum ſtatuta aut conſuetudines ipſius loci, quod ſufficit, quia circa ſolennitatem inſtrumenti & contractus attenditur ſtatutum aut conſuetudo loci ipſius contractus. *l. ſi fundus. ff. de euict. l. 3. in fi. ff. de teſtib. l. 2. C. quemadmodum teſtam. aper.* vbi dicitur quod teſtamenta debent inſinuari ſecundum leges moreſq; locorum, in quib. inſinuantur: quæ inſinuatio aperte reſpicit ſolennitatem actus. Ad idem text. *in l. ſi non ſpeciali. C. de teſtam. & in l. 1. C. de emancip. lib.* not. Bartol. & Doctor. *in l. 1. § 4. princ. C. de ſum. Trin. & fide cath.* ¶ Quod procedit licet alibi producatur tale inſtrumentum, quia quoad deciſionem litis, quæ oritur ex contractu aut inſtrumento attenditur ſtatutum loci ipſius contractus aut inſtrumenti, non loci vbi iudicium agitur, vt habetur *in d. rub. Ioan. And. & doctor. & in rub. de conſuet.* Anch. *in repe. c. 1. column. 97. de conſtit. no. in c. 2. & in c. quod clericis. de foro compet.* Cyn. *in leg. 1. q. 2. ff. quæ ſit longa con ſuet.* Socin. *in conſilio 271. columna 3. verſicul. his tamen non obſtan. lib. 2.* ideo ſtante conſuetudine quod libris mercatorum detur fides, probabunt tales libri vbicunque producantur etiam extra territorium loci ipſius conſuetudinis. Ioan. And. *in addit. in Spec. in tit. de inſtrum. edit. § nunc videndum. circa prin. magna additione.* Bal. *in l. exemplo. C. de prob. in rub. C. de fid. inſtru. column. 2. & in d. l. ſi non ſpeciali. C. de teſta. cum ſim.* vt per Dec. *in c. 1. col. 17 in fi. ver. 3. quod dicit Io. And. de prob.* Iaſ. *in l. quidam. § nummularios in 1. not. ff. de eden. in l. ſi arrogator colu. 1[illegible]. verſic. breuiter me tene contrarium. ff. de adopt. in l. admonen. li. colum. 17. verſi. vltimus caſus eſt. ff. de iureiur. in 1. lectura & 2. lectura. col. 41. num. 80. in d. l. 1. col. 5. verſi. 2. ex hoc membro. C. de ſumm. Trin. & fide cathol. & in d. l. non ſpeciali. in 2. not.*

C. de teſtam. ¶ Amplius ſi dubitetur quomodo & qualiter contractus aut inſtrumentum concipi debeat, & quæ clauſulæ
5 poni debeant, attenditur † etiam ſtatutum aut conſuetudo loci contractus vt apponantur clauſulæ conſuetæ apponi in loco contractus aut inſtrumenti: adeo quando dubitatur de conficiendis inſtrum. dotalibus & ſuper pactis in eis apponendis, debet ſeruari ſtatutum aut conſuetudo loci contractus matrimonii, vbi matrimoniū celebratur, quia dos eſt ſequela matrimonii. Alber. de Roſa *in l. exigere dotem ff. de iud.* Bald. *in c. 1. §. ſi de inueſt. de re alien. facta.* deciſ. Neapol. *deciſ. 226. col. pen.* Similiter interpretatio contractus fit ſecundum ſtatutum aut conſuetudinem *in l. 2. ff. ſolu. matr. circa ſign.* vt per deciſ. Neapol. *in d. deciſ. 226* ¶ Similiter gabella ſoluenda de contractu ſolui debet in loco contractus celebrati, Bal. *in l. magis puto. § illud. ff. de rebus eorum qui ſub tutel.* vt per Alex. *in conſ. 51. in prin. lib. 3. & in conſ. 143. colum. 2. lib. 6.* Dec. *in l. venientium. colum. 4. in 5. not. ff. ſi cert. pet. & in conſ. 457. in prin.* ¶ Nec mirum videri debet quod iudex Bononiæ interponat decretum in contractu inſtrumento forenſium & non ſubditorum, quia iſte dicitur actus voluntariæ iuriſdictionis, qui actus exerceri poteſt coram quocunq. iudice & in quolibet loco. *l. 2. ff. de off. procon. l. emancipari. in pr. & §. 1. ff. de adopt.* Anch. *in conſ. 320. Primum dubium in prin.* & hoc ſine dubio procedit, quia in tali exercitio iuriſdictionis voluntariæ non agitur de præiudicio tertii, ſed ſolum ipſorum contrahentium & iuriſdictionem voluntariam prorogantium. Ideo imperator poteſt creare comitem palatinum non ſubditum in terris eccleſiæ, quia talis creatio nō præiudicat ſummo pontifici, cum per talem creationem nō poſſit comes legitimare in terris eccleſiæ ſed in terris imperii tantum: ſimiliter non præiudicat talis creatio comitis ſubditis Papæ, quibus non poterit legitimatus ſuccedere: ita Soc. *in conſ. 47. col. 7. li. 4.* vbi alia ponit exempla. Ex quib. abunde arbitror reſponſum apparere ad omnia dubia. Et ſi qua noua accedant, pro viribus conabimur reſpondere. Ferrariæ 17. Aprilis 1548. Aymo Crauetta ex Sauiliano. I.V.D.

Svmmaria.

1 *Naturalis nepos inſtitui non poteſt ſtante ſobole legitima, quia tunc prohibitio quæ eſt in patre militat in nepote.*

2 *Vel dictio ponitur inter diuerſa.*

3 *Conditio, filii poſiti in conditione dicuntur vocati quando ſequeretur abſurdum quod extraneus ſubſtitutus præferretur liberis, & deſcendentibus teſtatoris.*

4 *Subſtitutio extenditur ad liberos ſubſtitutorum ex identitate aut maioritate rationis.*

5 *Subſtitutio interpretatur ſecundum inſtitutionem, vt prædilectus in inſtitutione cenſeatur etiam prædilectus in ſubſtitutione.*

6 *Geminata prædilectio voluntatem teſtatoris vehementiorem & efficaciorem demonſtrat.*

7 *Subſtitutio vna alteram declarat, vt prædilectus in vna ſubſtitutione cenſeatur prædilectus & in alia.*

8 *Subſtitutio facta in vno caſu trahitur ad alium caſum ex identitate rationis & ex præſumpta voluntate teſtatoris, etiam contra naturam & proprietatem verborum.*

9 *Caſus omiſſus non dicitur vbi ſubeſt eadem æquitas & omnimoda ſimilitudo.*

Similiter caſus dicuntur habentes eandem vel maiorem rationem.

10 *Maioritas rationis operatur in ſtatuto odioſo & contra ius vt fiat extenſio de caſu ad caſum.*

11 *Luxuria plus caſtitate habere non debet.*

12 *Voluntas teſtatoris declaratur eo modo quo voluntas ſtat in ratione.*

13 *Extenſio fit etiam in materia præciſa ad caſum improprium propter rationem naturalem vt habeat commodum, qui ſentit incommodum.*

Ratio naturalis operatur quod fit extenſio ad caſum improprium etiam in materia præciſa num. 13. & in verſ. extenſio.

14 *Relatio clauſulæ in fine poſitæ fieri debet ad omnia præcedentia quando non ſubeſt ratio diuerſitatis cur fiat ad vnum potius quam ad aliud, vbi idem in ſubſtitutione ſeu de clauſula poſita in fine ſubſtitutionis.*

15 *Clauſula omni meliori modo &c. operatur vt reſtringatur diſpoſitio ſpecificata.*

16 *Subſtitutio facta filio decedenti ſine filiis an extendatur ad eius filios.*

CONSILIVM CCCXXVI.

Pro dominis Alexandro & Hieronymo de Amadis fratrib. & ciuibus Mantuanis contra d. Alexandrum & Baptiſtam eius filium de Baſanis etiam ciues Mantuæ.

Divino ſubſidio ex corde poſtulato. Dominus Iacobus de Sachis ciuis Mantuæ inſtituit Alexandrum & Benedictum eius filios naturales & legitimos, ſubſtituendo vnum alteri decedenti ſine filiis maſculis legitimis & naturalibus ſimul vel naturalibus tantum deficientibus legitimis & naturalibus: & tunc eo caſu deficientibus filiis legitimis & naturalib. ſimul filii naturales tantum ſuccedere debeant eorum patri vel dictis filiis legitimis & naturalibus ſimul ſeu eorum filiis legitimis & naturalib. præmorientibus dictos filios naturales tantum ſuperſtites, & tunc eo caſu vnum alteri & alterum alteri ordine quo ſupra ſubſtituit per fideicommiſſum vel omni alio meliori modo, via, iure & forma & cauſa, quo, qua & quibus magis & melius fieri poteſt: filias autem mandauit dotari. Deinde prohibuit alienationem bonorum inter viuos & in vltima voluntate. Deceſſit Benedictus relicto Iacobo filio, deinceps mortuus eſt Franciſcus nepos teſtatoris relicto Alexandro eius patruo. Quæritur an Alexander dicatur ſubſtitutus ipſi Franciſco eius nepoti ex fratre? ¶ Quia potiſſima difficultas in eo conſtat, an filii naturales vnius lineæ dicantur ſubſtituti quo ad alteram lineam vt ex eo arguatur à fortiori ad ſubſtitutionem legitimorum in vtraq; linea. Ideo ad demonſtrandum ſubſtitutionem factam eſſe de naturalibus reſpectu vtriuſque lineæ conſidero quod poſtquam teſtator poſuit naturales tantum in conditione ad excluſionē ſubſtituti, vlterius procedit declarando quæſtio. & qualiter ſuccedant. ¶ Et primo dicit & declarat quod debeant ſuccedere eorum patri præſupponendo quod linea alterius heredis non deceſſerit, ſed adſint deſcendentes alterius lineæ naturales tantum, ita quod ſinguli deſcendentes naturales ex vtraq; linea ſuccedant eorum patri: & hoc ſuadetur ponderando dictionē eorum, pluralis numeri, quaſi dicat ſi ambo heredes relinquant naturales tantum ipſi ſuccedant eorum patri, id eſt, in portione patris eorum, quia per fideicommiſſum non ſucceditur patri grauato, ſed teſtatori grauanti. *l. cohæredi. §. cum filio. ff. de vulga.* & quod iſta interpretatio ſit vera & naturalis, imo & neceſſaria probatur, quia ſi intelligeremus quod teſtator voluerit ſimpliciter & indiſtincte ſubſtituere naturalem eius patri, etiam quod alter filius & heres reliquiſſet legitimos & naturales, ſequerentur duo abſurda. Primum, quod voluerit plus tribuere luxuriæ quam caſtitati, & præferre naturales legitimis contra diſpoſitionem iuris, quia extante ſobole legitima non poteſt relinqui naturalibus vltra vnam vnciam. *l. mater. C. de natu. lib.* quod cum expreſſe facere nō potuiſſet dicendum eſt quod multominus tacite facere voluerit. *l. qui ad certum. ff. loca.* Bartol. *in l. ſi quis ſub conditione. ff. de condit. inſtit.* ¶ Et † ſi dicas, non agitur 1
hic de ſubſtituendo filios naturales teſtatoris ſed heredum, reſpondeo, quod eadem videtur prohibitio in nepote ſpurio aut naturali ex patre legitimo quæ in filio ſpurio aut naturali exiſtente ſobole legitima. *leg. fin. C. de natu. lib.* Decius *in conſilio 258. in prin.* Imo *in conſilio 71.* ¶ Secundum abſurdum, quia teſtator in continenti & tacite diceretur ſe corrigere. *contra leg. non ea. ff. de condit. & demonſt.* nam ſemper diſpoſuit in fauorem naturalium in defectum legitimorum, & tamen intelligendo illa verba ſubſtitutionis eorum patri licet ex altera linea ſunt deſcendentes legitimi, vocarentur naturales exiſtentibus legitimis, ex quibus apparet neceſſarium eſſe dicere tunc vocatos cenſeri naturales ad portionem patris quando ex altero heredi nulli ſunt deſcendentes legitimi, ſi autem adſunt legitimi alterius lineæ, naturales non ſuccedant in portione patris ſed ipſi legitimi. ¶ Secundo conſidero quod poſtquam teſtator prouidit in fauorem naturalium in linea parentis eorum, caſu quo ex altera linea eſſent alii etiam naturales, voluit vlterius prouidere præſupponendo caſum quo legitimi omnes defecerunt & ex altera linea nulli ſupereſſent neque legitimi neq; naturales, ſed ſuperſtites tantum eſſent naturales vnius lineæ vocando illos naturales tantum ſuperſtites, ibi vel dictis filiis, &c. Et quod illa clauſula vel dictis filiis, &c. debeat intelligi hoc modo, neceſſario demonſtratur, quia dictum eius nō poteſt intelligi quando ex altera linea ſupereſſet proles legitima, nam tūc naturales ſubſtitui non potuiſſent vltra vnciam. Et ſi dicatur, quod illa ſubſtitutio in illa clauſula vel dictis filiis, &c. etiam reſtringatur ad portionem patris, dico quod tunc illa ſubſtitutio facta in oratione ſeparata eſſet ſuperflua, quia iam prouiſum erat in caſu in quo ageretur de portione patris, ergo vt aliquid operetur debet intelligi, quando ageretur de portione alterius lineæ. ¶ Secundo hoc probatur, quia illa dictio vel, venit ampliatiue ad præcedentia, addendo caſum diuerſum & diuerſam diſpoſitionem, quia † dictio vel ponitur inter diuerſa 2
vt in rub. de conſecra. in 2. leſ. vel alter. Socin. *in conſilio 4. volum. 5. in fin. lib. 1.* ergo vt cenſeatur prouiſum in caſu diuerſo à primo dicendum eſt quod loquatur teſtator quādo ex altera linea deficiunt naturales

turales ſimul & naturales tantum, vt eo caſu naturales tantum
vnius lineæ ſuperſtites ſuccedant. ¶ Tertio hæc intelligentia,
probatur ponderando verbum, ſuperſtites, quod verbum non
fuit poſitum in præcedenti ſubſtitutione facta in portione pa-
tris ad demonſtrandum, quod intellexit in iſta ſecunda ſubſti-
tutione naturalium etiam de altera linea, quaſi dicat, licet ex
alia linea nulli ſuperſint neque legitimi neq; naturales, tamen
volo quod ſuperſtites vnius lineæ ſuccedant, & ſic vtitur ver-
bo ſuperſtites teſtator, quando ex vna tantum linea ſuperſunt
naturales: nam vbi adſunt ex vtraq; linea naturales ſecundum
communem vſum loquendi non dicimus ſuperſtites, ſed libe-
ros vocamus vtriuſq; lineæ, nam illud verbum ſuperſtites ad
reliquas magis pertinet: & ſenſus iſtarum duarũ ſubſtitutionũ
eſt, ſi deficiãt ab vtraq; linea legitimi & adſunt naturales, ipſos
naturales ſubſtit. ſi vero deficiant legitimi vtriuſq; lineæ & ſo-
lum ſuperſint naturales vnius lineæ, ipſos ſuperſtites naturales
ſubſtituros reſpectu vtriuſq; lineæ. ¶ Tertio ad probandum fa-
ctam eſſe ſubſtitutionem naturalium reſpectu vtriuſq; lineæ,
conſidero fundamentum vnum naturale & efficaciſſimum iu-
dicio meo, nam teſtator prætulit alios naturales heredum filia-
bus propriis ipſorum heredum legitimis & naturalibus ſimul
mandato eas dotari, quanto magis dicendum eſt quod volue-
rit præferre naturales vnius lineæ, heredibus extraneis alterius
lineæ? Hoc ita præſuppoſito quod naturales dicantur ſubſtitu-
3 ti etiam reſpectu alterius lineæ, dico quod † quæſtionem no-
ſtram videtur decidere Ancha. *in conſilio 74. contra Philippum.* vbi
quod filii poſiti in conditione cenſentur vocati, quando alias
ſequeretur abſurdum, quod extraneus ſubſtit. præferretur li-
beris & deſcendentibus teſtatoris: ibi enim teſtator inſtituit
duos filios, quos inuicem ſubſtituit, & eis decedentibus ſine li-
beris ſubſtituit extraneum, moritur vnus filius inſtitutus reli-
ctis liberis, moritur alter ſine liberis, liberi illius inſtituti cen-
ſentur ſubſtituti patruo & vocati ne alias extraneus ſubſtitutus
eis præferatur, & ſic in effectu vult Anch. quod inter ipſos po-
ſitos in conditione inducatur tacita & reciproca ſubſtitutio:
quod Anch. dictum refert & ſequitur Socinus *in l. cum auus. colu.
pen. verſi. alias autem allegabatur. ff. de condit. & demonſt.* Eodem modo
dicendum eſt in caſu noſtro quod filii legitimi & naturales po-
ſiti in conditione, ne quidem ſemel dicantur vocati inuicem,
ne alias ſequatur abſurdum, quod filii naturales tantum vlti-
mo loco vocati & minus dilecti præferantur ipſis legitimis, fin-
ge quod Iac. defunctus reliquiſſet naturalem filium & Alexan-
drum patruum, ſi dicimus patruum vocatum non eſſe, natura-
lis ſine dubio vocatus eſſet per teſta. & excluderet patruum e-
undem & filium naturalem & legitimum teſtat. quatenus at-
tinet ad eius voluntatem, licet de iure id fieri non poſſit, vt ſu-
pra dictum eſt, quo quid abſurdius: cum teſtat. noluerit natu-
rales admitti niſi in ſubſidium deficiẽtibus omnibus legitimis:
quod vnicum fundamentum videtur efficaciſſimum apud eos
quidem, qui ipſi naturali iure vtuntur. Et ſi dicas, imo non ad-
mitteretur naturalis extãte patruo eodemq; filio legitimo, re-
ſpondeo, ergo apparet quod patruus præferri debet naturali,
& ſi naturalis admitteretur deficiente patruo, a fortiori admit-
ti debet patruus, & ſic excluditur naturalis propter patruum, er-
go patruo ad quam admitteretur naturalis deficiẽte patruo ap-
plicari debet ipſi patruo *l. poſt legatum. § admittere. ff. de his quibus vt
indig. l. ſi defunctus.* vbi Bald. & Paul. de Caſtr. *C. de ſuis & legi. l. illam.
4 C. de colla. l. pen. C. de leg.* ¶ Secundo principaliter ad † deciſionem
huius quæſtionis adduco quod multum in propoſito ſcribit
Capra *in conſ. 123. in 1. dub.* nam teſtator ibi ſubſtituerat Io. & Bla-
ſium pro certa parte, & in alia parte ſubſtituerat alios & eorum
filios, dicit Capra quod etiam filii Ioannis & Blaſii cenſentur
vocati & ſubſtituti quando in eis militat eadẽ aut maior ratio
vocationis quam in filiis aliorum ſubſtitutorum remotiorum,
& ſic vult Capra fieri extenſionem ad perſonas ex identitate,
aut maioritate rationis. Eodem modo, imo fortius, dicendum
eſt fieri extenſionem de caſu ad caſum ex maioritate rationis,
& quod ſi vocauit teſtator naturales per ſubſtitutionem reci-
procam deficientibus legitimis, multo fortius cenſeatur vocaſ-
ſe ipſos legitimos per ſubſtitutionem reciprocam cum facilius
fiat extenſio de caſu ad caſum quam de perſona ad perſonam.
l. ſi quis ita. § pen. ff. de teſta. Aret. *in l. Gall. § & quid ſi tantum. col. 5. ff. de li.
& poſt.* & alibi ſæpiſſime doct. ¶ Tertio conſidero † principali-
5 ter in fauorem Alexandri quod ipſe fuit prædilectus naturali-
bus inſtitutione, ideo ex hoc ſolum cenſeri debet prædilectus
etiam in ſubſtitutione, Bart. *in l. Lucius. col. pen. verſi. ſed quæro circa hoc
de pulchra q.* vbi late Alex. & doct. *ff. de vulg.* Alex. *in l. liberadi. § quæ
diſcretus. ff. de vulg. in conſi. 66. libro 2.* vbi quod filiæ excluſæ in inſti-
tutione cenſentur etiam excluſæ in ſubſtitutione, & maſculi
prædilecti in inſtitutione cenſentur etiam prædilecti in ſubſti-
tutione, modo cum filii naturales longe minus dilecti atq; le-
gitimi fuerint ſubſtituti ipſis filii. legitimis & eorum filiis vtri-
uſq; lineæ, & etiam fuerint ipſi naturales inuicem ſubſtituti,
quanto magis idem dicendum eſt ad fauorem legitimorũ qui
in inſtitutione fuerant prædilecti. ¶ Quarto conſidero quod fi-
lii legitimi non ſolum fuerunt prędilecti in inſtitutione ſed et-
iam ſubſtitutione, quia prius fuerunt vocati ad ſubſtitutionem
& naturales ſolum in defectum legitimorum, & ſic concurrit
duplex prædilectio. i. in inſtitutione, & ſubſtitutione ex † qua 6
geminata prædilectione efficacior, & vehementior arguitur
voluntas teſtatoris in gratiam & fauorem ipſorum legitimo-
rum. *l. & ſi Chriſtus. de iureiur. C. de emenda.* Inſt. cod. *in 2. eius editione
circa fin. conſtitutionis.* ibi nemini venit in dubium, quod repetita
prædilectio hoc probanti ſatis validum famoſumque eſſe: &
dicit Oldr. *in conſi. 53. Factum tale eſt, domina V. in fi.* quod actus rei-
teratio oſtendit mentis perſeuerantiam. Alibi ſcribit Bald. *in c.
cum te. col. 2.* quod verba geminata ſignificant præciſam intentio-
onem diſponentis. ¶ Quinto adduco † quod ſcribit Curt. ſen. 7
in conſi. 76. colum. 12. circa med. verſi. corroborantur præmiſſa. vbi quod
prædilectus in vna ſubſtitutione cenſetur etiam prædilectus in
alia ſequenti ſubſtitutione, igitur cum fuerint legitimi prius
ſubſtituti, & naturales vocati in defectum legitimorum tan-
tum: ſine dubio dicendum videtur quod in ſequenti ſubſtitu-
tione, & caſu quo vocantur naturales in defectum legitimo-
rum prædilecti dicantur legitimi ſi ipſi exiſtant. ¶ † Sexto nos 8
videmus quod ſubſtitutio facta in vno caſu trahitur ad alium
caſum ex identitate rationis ex præſumpta voluntate teſtato-
ris, etiam contra naturam & proprietatem verborum. Ideo in
expreſſa pupillari continetur tacita vulgaris ex præſumpta vo-
luntate diſponẽtis, quia ſi voluit teſtator quod ſubſtitutus ha-
beret bona filio exiſtente herede & moriente in ætate pupilla-
ri, idem præſumitur voluiſſe ſi heres non eſſet. quia idem veri-
ſimiliter depoſuiſſet ſi de eo cogitaſſet. tex. eſt *in l. iam hoc iur. ff. de
vulg.* & tamen verba pupillaris ſubſtitutionis de directo repu-
gnant vulgari, quia pupillaris concipitur affirmatiue, vulgaris
autem negatiue ſi heres non erit: iſta præſumpta voluntas diſ-
ponentis efficacior eſt in caſu de quo agitur, quam in terminis
d. l. iam hoc iure. quia in caſu noſtro voluntas iſta tacita colligitur
ex modo diſponendi, prius inſtituendo & ſubſtituendo legiti-
mos ponendo naturales in conditione demum deficientibus
legitimis, deinde vocando ipſos naturales ſolum in defectum
legitimorum, quæ declaratio voluntatis non æque oſtenditur
neque declaratur in caſu *d. l. iam hoc iure.* ſed lex ipſa declarat in-
uando diſpoſitionem teſtatoris, itaq; ſtante tali declaratione
voluntatis teſtatoris in caſu iſto, quis illud audeat dicere non
vocatos dici legitimos, ſi extant, eo caſu quo vocati ſunt natu-
rales, ſi non extant legitimi? ¶ † Septimo conſidero, poſito & 9
non conceſſo, quod caſus de quo agitur diceretur omiſſus à te-
ſtatore quoad verba, non tamen dici poteſt omiſſus à teſtatore
quoad rationem, æquitatem, & omnimodam ſimilitudinem
vt legitimus admittatur eo caſu, quo naturalis admitteretur
legitimo non extante: nam caſus omiſſus non dicitur vbi ſub-
eſt eadem æquitas & omnimoda ſimilitudo. Baldus *in l. mater.
C. de inſtit. & ſubſtit.* Dicuntur autem caſus ſimiles qui habent e-
andem vel maiorem rationem. Bal. *in l. illud. col. 2. C. de ſa. roſan. ec-
cleſ. in l. ſi quis non dicam rapere. in prin. C. de epiſc. & cle. & in l. curatoru. C.
de neg. geſt.* ſed in caſu de quo agitur vbi omiſſus dici poſſet ma-
ior conſtat ratio vocationis legitimi quam in caſu expreſſu ad-
miſſionis naturalis: & cum maior ſit ratio vocandi legitimos
quam naturales tam de iure diuino dum diſponit. Non enim
erit heres filius ancillæ cum filio liberæ, quam de iure huma-
no, vt patet, *C. de natur. lib. per totum.* & etiam ex diſpoſitione ex-
preſſa teſtatoris legitimos anteponentis: & ex ipſa maioritate
rationis extendi debet ſubſtitutio de caſu ad caſum, nam † vi- 10
demus quod etiam in ſtatuto odioſo & contra ius commune
ſit extenſio de caſu ad caſum propter rationis maioritatem.
Bald. *in l. quod vero. columna 1. poſt med. verſi. ſed pone quod ſtatutum. ff. de
legibus. & l. ſi vero. § de viro ff. ſolu. matr.* maior enim ratio minorem
includit, dicit Bald. per tex. *in l. cum pacto. ff. de ſer. expor. & in l. ſi vna
matre. C. de Bon. mater.* Idem no. Bald. *in l. 2. in fin. C. de in ius vocan.*

ſi etiam à maioritate rationis in ſtatuto arguit Bald. in l. aſſiduitatis. verſi. pone ſtatutum. C. commun. de ſucceſ. & in l. maximum vitium. C. de liber. præter. & quod procedit argumentum à maioritate rationis etiam in materia odioſa, eſt textus in l. qui indignus. ff. d. ſenat. in l. nec in ea. vbi Bald. ff. de cadu. in l. relegatorum. § poteſt. ff. de interdict. & relega. l. in ſuis. ff. de lib. & poſthum. ibi, licet eos exheredaſſe quos occidere licebat. l. 2. C. ne fideiuſſ. dot. den. c. alloquimur de ſent. excommun. Imo procedit tale argumentum à maioritate rationis, etiam in materia correctoria. Imola in d. l. ſi vero. § de viro. colum. 5. ff. ſolut. matrim. quem refert & ſequitur Dec. in conſ. 333. colum. 3. in prin. addo Fulgoſ. inter conſilia Cur. ſenioris in conſi. 34. col. 5. circa med. in 3. dubio. ſi in materia odioſa & correctoria admittitur argumentum à maioritate rationis in ſtatuto ſecundum memoratos patres, quod ipſum tamen dictum non ita ſimpliciter admitterem, quanto magis procedet tale argumentum in materia non correctoria, imo nec odioſa ſed prorſus fauorabili, cum agitur de extenſione
11 facienda, ne † alias conditio naturalium futura ſit melior atq; legitimorum, & ne plus habeat caſtitate luxuria. iuxta tex. in §. 1. in auth. de reſt. & ea quæ parit. Paul. de Caſt. & doct. in l. ex facto. §. ſi quis rogatus. ff. ad Treb. Alex. in conſ. 60. col. 4. lib. . & ſi ſtatutis ita argumentamur à maioritate rationis, idem dicendū eſt in vltima
12 voluntate, nam † declaratur voluntas teſtatoris eo modo, quo voluntas ſtatuentium. Bart. in l. 1. per gloſ. ibi. C. de his quib. vt indign. Rom. in conſ. 65. colum. fin. & in conſ. 123. col. 2. late Curt. ſenior in conſ.
13 27. col. 6. & in conſ. 29. col. 2. circa med. ¶ Octauo † conſidero vnum fundamentum non contemnendum, nos habemus quod etiā in materia præciſa aut in qua verba præciſe debent intelligi, fit tamen extenſio de caſu proprio ad improprium propter regulam iuris fundatam in ratione naturali, puta conditio debet præciſe impleri & in forma ſpecifica. l. Mæuius & l. quis her. ff. de cond. & demonſtr. & tamen propter rationē naturalem poteſt impleri in caſu improprio. Ideo conditio impleri ſi in perſona heredis poteſt impleri in perſona bonorum poſſeſſoris, qui improprie eſt heres, & hoc propter regulam iuris fundatam in ratione naturali, quod qui ſentit commodum, debet ſentire & incommodum: iſte eſt tex. in l. ſi his legatum. vbi Soc. in 2. not. ff. de condit. & dem. ¶ Quid hic dicemus vbi militat æquitas diuina & naturalis, ne melior ſit conditio luxuriæ quam caſtitatis? & vbi non agitur de habenda extenſione ad caſum improprium ſed ſolum de præſumendo quod voluerit teſtator legitimos vocare & ſubſtituere eo caſu, quo ceſſantibus legitimis naturales vocauit.
14 ¶ Nono † conſidero illam clauſulam omni meliori modo, &c. appoſitam in fine ſubſtitutionum, quæ clauſula ad omnes ſubſtitutiones referri debet, ex quo non ſubeſt ratio diuerſitatis cur ad vnam referatur potius quam ad aliam. l. 3. § plane autem inter medias. ff. de lib. & poſthum. l. ſalua ſcriptura. §. fin. ff. de leg. 1. l. fin. vbi Bartol. & Mod. ff. de rebus dub. l. quiſquis. vbi Bald. in 1. not. Cod. ſi cert. pet. l. . Cod. de ſub præter. cap. in quaſtionis de appell. & tit. terminis ſubſtitutionis tradit Decius in conſilio 79. columna 1. poſt medium. vbi quod clauſula poſita in fine ſubſtitutionis refertur ad omnes gradus præcedentis ſubſtitutionis, & dicit Capra in conſilio 125. colum 2. poſt prin. quod clauſula poſita in fine teſtamenti refertur ad omnia præcedentia. Quod ipſum procedit ſine dubio in caſu iſto: quia maior ratio referendi eſt ad ſubſtitutionem legitimorum vt valeat omni meliori modo, &c. cum fuerint magis dilecti quam ad ſubſtitutionem naturalium minus dilecto-
15 rum. ¶ Hoc † ita præſuppoſito, dico quod natura iſtius clauſulæ omni meliori modo, &c. eſt vt non reſtringatur diſpoſitio ad ſpecificata tantum, apparet enim de mente diſponentis in tali clauſula quod voluit ſe reſtringere ad ſpecificata. Bald. in l. vnum. colum. 7. ff. ſi cert. pet. Alexand. in conſi. 115. libro 3. not. etiam Bal. in conſi. 489. in cauſa orientis inter capitulum. colum. 1. in fin. libro 4. Socin. in conſilio 142. colum. antepen. libro 1. Ideo licet teſtator ſolum ſpecificaſſet ſubſtitutionem legitimorum in aliquo caſu, tamen noluit ſe reſtringere ad illum caſum, ſed voluit eam valere omni meliori modo, &c. conſequenter quamdiu extarent legitimi quod ſemper omnino ſuccederent, ex quo ipſis deficientibus ſubſtituit naturales. ¶ Decimo vbi præmiſſa omnia ceſſarent, quæ ipſa tamen fortiſſime vrgent, ex alia præſens quæſtio videtur clariſſima & ſplendidiſſima fieri, omittendo illam difficultatem, an ſubſtitutio naturalium dicatur facta reſpectu vtriuſque lineæ, & conſidero quod ſine dubio Alexander fuit ſubſtitutus Benedicto eius fratri caſu quo decederet ſine filiis, qui caſus non euenit, quia deceſſit Benedictus relicto Franciſco,
ideo nos ſumus in illa quæſtione an † ſubſtitutio facta Benedi- 16
cto decedenti ſine filiis extendatur ad Iacobū eius filium, qui poſtea deceſſit ſine filiis. In qua difficultate licet doctores dicant non extendi ſubſtitutionem ad filios grauati decedentis ſine liberis, vt per Oldrad. in conſil. 11 per tex. in l. heredibus. & in l. ex facto. § pen. ff. ad Treb. l. ſi quis heredem. vbi late Mode. C. de Inſtitut. & ſubſtit. & alibi ſæpe doct. tamen iſta concluſio recipit plures declarationes. Et primo non procedit quando teſtator ſimpliciter conſiderat defectum liberorum, quia tunc locus eſt ſubſtitutioni etiam poſt mortem ipſorum liberorum, ſine liberis decedentium. Alexand. in conſil. 43. colum. 3. verſic. præterea poſito. lib. 3. & in conſil. 101. in 3. dubitatione. lib. 7. Socinus in l. ſolemus. in fin. ff. de condit. & demonſt. Deci. in conſil. 480. colum. 3. circa med. & in conſi. 185. in conſi. 194. colum. 2. circa med. & in conſi. 236. colum 2. circa med. Sed in caſu de quo agitur, licet teſtator primo loco videatur ſe retuliſſe ad tempus mortis heredum, tamen in ſequentibus magis videtur conſideraſſe defectum ipſorum liberorum. ¶ Secundo principaliter non procedit dictum illud Oldrad. in d. conſ. l. 21. quando apparet de mente teſtatoris, quod noluit bona tranſire ad heredes extraneos. Paul. de Caſt. in conſ. 343. quia ex allegationibus. colum. 1 circa med. lib. 1. Curt. iun. in conſ. 121. colum. 7. vbi Curt. quod dictum Old. non procedit quando in vltimo gradu ſubſtitutionis vocati ſunt agnati, vel quando eſſet prohibitio de non alienando. Sed hic apparet de mente teſtatoris quod noluit bona tranſire ad extraneos excludendo filias proprias heredum prohibendo alienationem, & amplius præficiendo naturales filiabus, ex quo dicto clariſſima videtur res. ¶ Tertio concurrit vnum aliud fundamentum coniecturale efficaciſſimum, & ſolum ſufficiens ad victoriam cauſæ per quod euitatur dictum Oldr. in d. conſi. 21. quia teſtator in d. clauſula vel dictis filiis, &c. ſubſtituit naturales non ſolum poſt mortem filiorum & heredum, ſed etiam poſt mortem nepotum filiorum ipſorum heredum, ita quod ſi Benedictus reliquiſſet filium naturalem is ſuccederet & admitteretur ad ſubſtitutionē mortuo Iacobo, quanto magis dicendum eſt idem iuris eſſe in fauorem prolis legitimæ aut Alexandri expreſſe ſubſtituti Benedicto eius fratri, quod cenſeatur ſubſtitutus etiam filio ipſius Benedicti defuncto ſine liberis, & quod extendatur ſubſtitutio, ſeu verius facta intelligatur ita ample in fauorem legitimæ prolis ſicut in fauorem prolis illegitimę ne proles legitima magis dilecta a iure & à teſtatore videatur deterioris conditionis atque proles impura & infecta. Ideo Alexander cenſetur ſubſtitutus Benedicto fratri ſub duplici conditione alternatiua, ſi ipſe Benedictus aut eius filii decederent ſine filiis, iuxta doctr. Bart. in l. codicillos. in princip. ff. de vſufruct. leg. in l. ſi ſic. ff. de leg. 3. & in l. Centurio. vbi late Scriben. ff. de vulg. ¶ Ex præmiſſis concludo in fauorem agentium concurrendo in ſententiam præſtantiſſimi domini Ioannis Pauli Medices aduocati Mantuani vti fratris honorandi, ſaluo ſemper ſaniori conſilio magnifici Senatus Mantuani. Ferrariæ 22. Maii 1548.

Aymo Crauetta ex Sauiliano

I. V. D.

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